

Implementation of the  
**MONTEREY  
AGREEMENT**

Statement of Principles by the  
State Water Contractors  
and the State of California  
Department of Water Resources  
for Potential Amendments to the  
State Water Supply Contracts

October 1995

Lead Agency

**Central Coast Water Authority**  
255 Industrial Way  
Buellton, California 93427-9565  
Contact: Dan Masnada, Executive Director  
805-688-2292 or 805-686-4700 (Fax)

Prepared by

**Science Applications International Corporation**  
816 State Street, Suite 500  
Santa Barbara, California 93101  
Contact: Christopher Clayton, Project Manager  
805-966-0811 or 805-965-6944 (Fax)

**FINAL  
PROGRAM  
ENVIRONMENTAL  
IMPACT REPORT**



*FINAL*  
**PROGRAM ENVIRONMENTAL IMPACT REPORT**

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MONTEREY AGREEMENT**

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SCH No. 95023035

October 1995

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## TABLE OF CONTENTS

1.0 INTRODUCTION.....	1
2.0 FINAL EXECUTIVE SUMMARY.....	3
3.0 ERRATA.....	7
4.0 PUBLIC COMMENTS ON THE DEIR .....	13
5.0 RESPONSES TO PUBLIC COMMENTS .....	15

## FIGURES

ES-1 PROPOSED ACTION ENVIRONMENTAL IMPACTS SUMMARY .....	5
1.2-1 SWP FACILITIES .....	8
3.6-3 NET CHANGE IN DELIVERIES TO AGRICULTURE (3.0 MILLION AF SWP DEMAND) WITH 130,000 AF ENTITLEMENT TRANSFER.....	9
3.6-5 NET CHANGE IN DELIVERIES TO AGRICULTURE (4.12 MILLION AF SWP DEMAND) WITH 130,000 AF ENTITLEMENT TRANSFER.....	10

## 1.0 INTRODUCTION

The Final Environmental Impact Report (FEIR) comprises a Final Executive Summary, minor corrections to the Draft EIR for the implementation of the Monterey Agreement Statement of Principles by the State Water Contractors and the State of California Department of Water Resources (dated May 1995), and the text of public comments received by the Central Coast Water Authority (CCWA) with responses to those comments. This document, in combination with the Draft EIR, forms the Final EIR for implementation of the Monterey Agreement Statement of Principles. This document should be read together with the Draft EIR; the text of the Draft EIR has not been reprinted in this document but is incorporated herein by reference.

A final Executive Summary is included as Section 2.0. Where text revisions have been made, they are set forth in the Errata section (Section 3.0) and are referenced in the responses to comments. Public comments have been numbered and are included in section 4.0 of this document. Responses to these comments have been numbered correspondingly and are included in section 5.0.



## 2.0 FINAL EXECUTIVE SUMMARY

The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report (EIR) when a program such as implementation of the Monterey Agreement is believed to have a potential for significant impacts on the environment. The Central Coast Water Authority (CCWA) was designated by agreement among a majority of the State Water Project (SWP) Contractors and the Department of Water Resources (DWR) to act as the lead agency for CEQA compliance for the Monterey Agreement program EIR. The Monterey Agreement contains 14 principles, the implementation of some of which have the potential for ascertainable environmental consequences. This program EIR analyzes the Monterey Agreement implementation steps to the extent they are presently available.

### PURPOSE AND NEED

Shortages of deliveries of water from the SWP have prompted SWP Contractors (both Agricultural Contractors and Municipal and Industrial [Urban] Contractors) to consider amendments to their water supply contracts with DWR. Some of the Contractors have considered litigation to resolve differences over water allocations. To avoid litigation, and to make the SWP operate more effectively for all Contractors, DWR and the Contractors have engaged in mediated negotiations toward a settlement of their disputes. The Monterey Agreement is the result of these negotiations.

### PROPOSED ACTION AND ALTERNATIVES

The Monterey Agreement contains 14 principles, the implementation of some of which will have ascertainable and immediate environmental consequences. Some of these consequences, however, are difficult to quantify. Due to the uncertainty associated with the level of implementation of each of the program components, three program scenarios are defined. It is these scenarios (variants of the Proposed Action) and the No Project Alternative that are the subject of this EIR.

The five major program components of Monterey Agreement implementation, that when put into operation have the potential for current, tangible, and quantifiable environmental impacts, are as follows:

1. *Revisions to the methodology used to allocate water among Contractors.* Under the Monterey Agreement, water from existing SWP facilities is to be allocated based on entitlement. In years when SWP supplies are less than Contractor requests, water will be allocated in proportion to each Contractor's share of total Contractor entitlements to water, with no initial reduction in supplies to Agricultural Contractors. Existing categories of surplus, wet weather, and make-up water will be replaced by a single interruptible water category allocated on the basis of entitlement.
2. *Retirement of 45,000 acre-feet (AF) of agricultural entitlement.*

3. *Transfer by sale, between willing sellers and willing buyers, of 130,000 AF of entitlement from Agricultural Contractors to Urban Contractors.* Also included are the potential for sales to non-contractors as well as additional entitlement transfers among Contractors.
4. *Changes in control of the Kern Fan Element (KFE) property of the Kern Water Bank (KWB).* This change in control would be the sale or long term lease (with option to purchase) of the KFE property and related assets by DWR to designated Agricultural Contractors. The KFE lands were acquired by DWR for the purpose of banking SWP water. The KWB is defined as any opportunity to recharge SWP water in Kern County, the purpose of which is to store surplus water from the Sacramento-San Joaquin Delta during wet years for extraction during dry years to increase the SWP yield.
5. *Changes in the manner in which Castaic Lake and Lake Perris terminal reservoirs may be operated.* The Monterey Agreement provides that SWP Contractors who participate in repayment of the costs of Castaic and Perris Reservoirs will have an opportunity to directly utilize a portion of the respective capacities in order to optimize their water storage and supply operations to meet local Contractor needs and help ensure a firm water supply. To this end, these Contractors have proposed that approximately 50 percent of the active storage capacity of these reservoirs be available for withdrawal and use by these Contractors under a set of operational conditions.

These five major components form the basis for the analysis of environmental consequences in the three program scenarios. Also evaluated is the No Project Alternative, i.e., the Monterey Agreement is not implemented.

Alternatives that would accomplish many, but not all, of the objectives of the Monterey Agreement are also discussed. These include litigation among and between Contractors.

## ENVIRONMENTAL CONSEQUENCES

A summary of potential environmental impacts associated with implementation of the Proposed Action when compared to status quo conditions, i.e., current conditions, is presented by resource area in Table ES-1.

TABLE ES-1 PROPOSED ACTION ENVIRONMENTAL IMPACTS SUMMARY

RESOURCE AREA	STATEWIDE IMPACTS	SITE-SPECIFIC IMPACTS		
		<i>Kern Fan Element</i>	<i>Castaic Lake</i>	<i>Lake Perris</i>
Geology and Soils	Negligible	Negligible	Scenarios A and B: Beneficial, stabilization of lake banks	Negligible
Water Resources				
Surface water	Negligible	Negligible	Scenarios A and B: Higher than historic surface elevation and storage Scenario C: Prolonged drawdown	Scenarios A and B: Historic surface elevation and storage maintained Scenario C: Prolonged drawdown
Water quality	Negligible	Negligible	Scenarios A and B: Negligible Scenario C: Beneficial	Negligible
Groundwater	Negligible	Negligible	Negligible	Negligible
Air Quality	Negligible	Negligible	Negligible	Negligible
Biological Resources	Indeterminate	Potentially adverse, mitigable	Negligible	Negligible
Cultural Resources	Indeterminate	Potentially adverse, mitigable	Scenario A: Negligible Scenarios B and C: Potentially adverse, mitigable	Scenario A: Negligible Scenarios B and C: Potentially adverse, mitigable
Land Use	Adverse, not significant	Negligible	Negligible	Negligible
Recreation	Indeterminate	Negligible	Scenarios A and B: Beneficial Scenario C: Adverse, not significant	Scenarios A and B: Beneficial Scenario C: Adverse, not significant
Socioeconomics	Adverse, not significant	Negligible	Negligible	Negligible
Health and Safety	Indeterminate	Negligible	Negligible	Negligible

Source: SAIC 1995.



### 3.0 ERRATA

The following changes to text and/or tables and figures have been incorporated into the Final EIR.

1. Figure 1.2-1 has been revised to include the Coastal Branch Phase II project. The revision is attached.
2. The sentence that straddles pp. 3-1 and 3-2 that reads, "Effects in those areas relinquishing water entitlement are likely to be centered on agricultural practices while those in areas acquiring water entitlement may relate to growth accommodation" has been rewritten. It now reads:

In the areas where entitlement to SWP water is relinquished the effects of such actions will most probably be experienced in the area of agricultural practices. It is possible that cropping patterns will change and/or cropland will be idled. Areas acquiring entitlement to water are likely to be urban in nature and the potential effects will focus on growth inducement concerns.

3. Figure 3.6-3 and Figure 3.6-5 have been corrected and are attached.
4. The second sentence of the last paragraph on page 4-24 regarding Upstream Consequences has been replaced with the following sentences.

Annual storage withdrawals from San Luis Reservoir are made during the summer and early fall to meet high demands when diversions from the Delta are most limited by supply availability.

5. The sentence on page 4-35 which reads, "Source and finished water levels of *Giardia* were 0.05 and less than 1 cysts/100 liters, respectively" has replaced by the following statement.

Source water levels for *Giardia* were 0.05 cysts/100 liters. No *Giardia* were detected in any of the finished water samples.

6. Minor changes to text have been made on p. 4-65 in section 4.4.3: Mitigation Measures. The affected text (added text is underlined, deleted text is ~~striethrough~~) is presented below:

The following general mitigation measures are suggested for the construction of spreading basins and new facilities on the KFE. Because this is a Program EIR, it is recognized that some or all of these measures may be inapplicable to the facilities when they are designed and constructed. It is equally possible that when the precise location and design of these facilities later is determined and analyzed under CEQA, new mitigation measures will be found to be more appropriate than the ones listed below. Specific project(s) for recharge facilities on the KFE will require compliance with CEQA and other applicable regulations including state and federal Endangered Species Acts. It is for these reasons that the following mitigation measures are suggestions only and may be replaced with specific mitigation measures, following consultation with governmental wildlife agencies, which would be incorporated into an approved Habitat Conservation Plan.

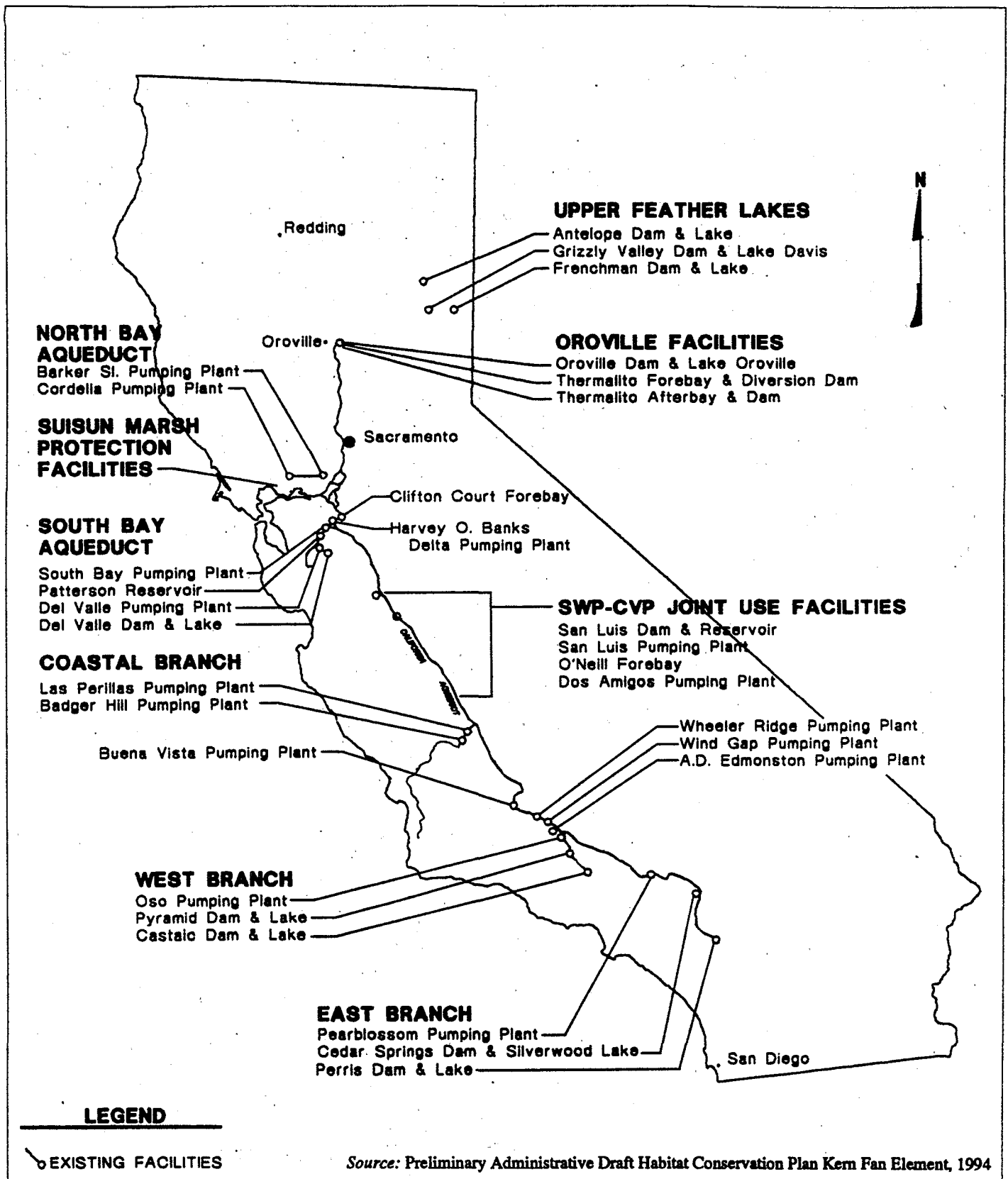
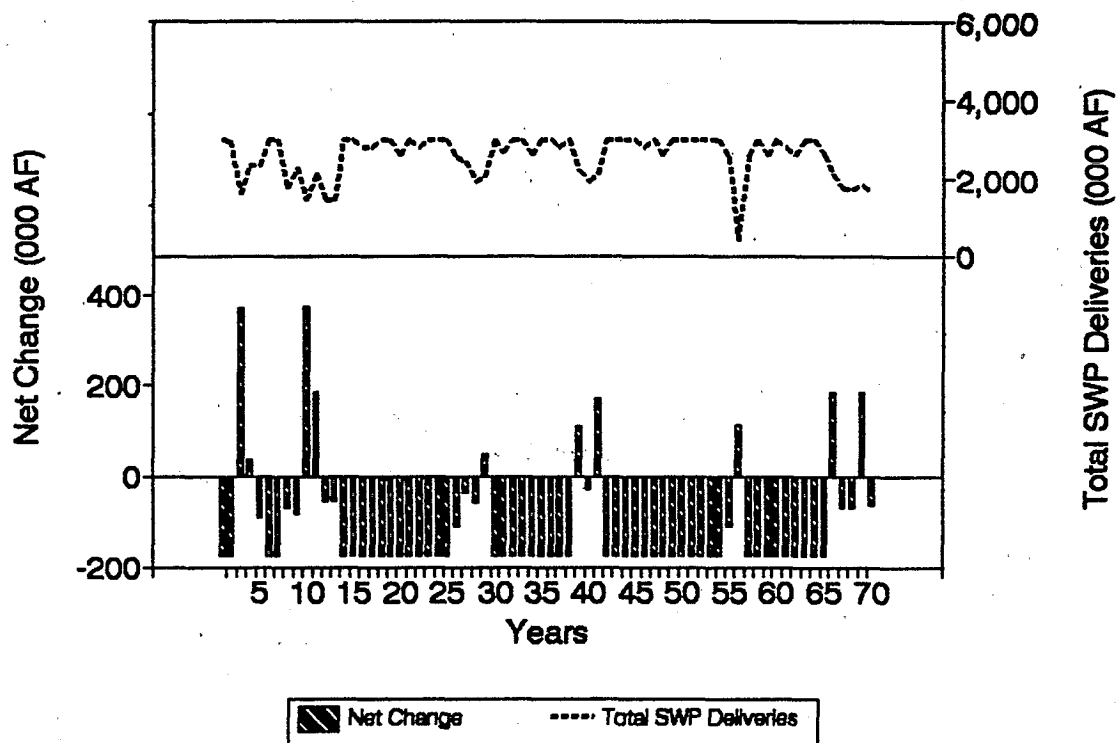
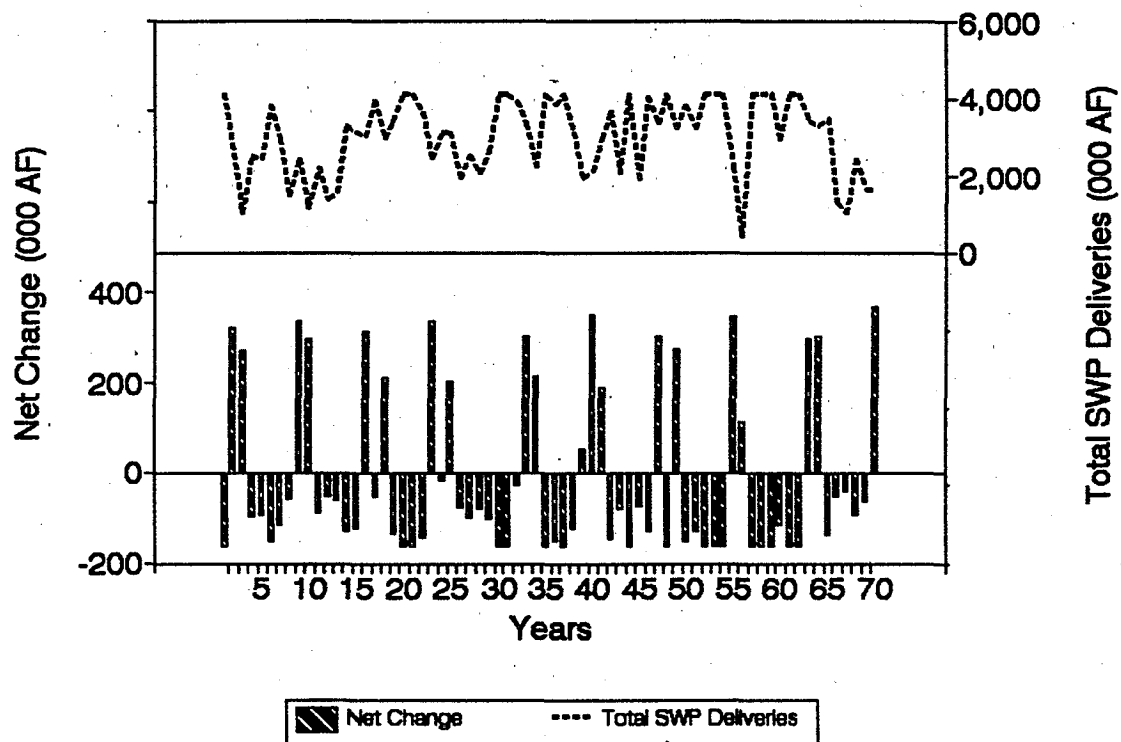


Figure 1.2-1. SWP Facilities.



Source: MWD, 1994; SAIC, 1995

**Figure 3.6-3. Net Change in Deliveries to Agriculture  
(3.0 Million AF SWP Demand) With 130,000 AF Entitlement Transfer**



Source: MWD, 1994; SAIC, 1995

**Figure 3.6-5. Net Change in Deliveries to Agriculture  
(4.12 Million AF SWP Demand) With 130,000 AF Entitlement Transfer**



1. Prior to construction of spreading basins and new facilities, surveys of the proposed impacted area for sensitive species will be conducted as may be required. To the extent feasible, locate, design, and construct facilities in a manner that avoids significant adverse impacts to sensitive species. To the extent avoidance is infeasible, mitigate impacts with other mitigation measures.
  2. Where on-site mitigation is infeasible, off-site mitigation should be considered, selecting lands that will provide suitable habitat for the impacted species.
  3. Design spreading (ponding) and extraction facilities and appurtenances to provide, to the extent feasible and without interfering with the project objectives, ~~in a manner that provides habitat for wildlife~~ both when inundated and when dry. For example, design berms to conform to the natural setting and revegetate with native plants (where the plants are likely to succeed and will not be outcompeted by exotics already existing in the vicinity). In this way, the loss of habitat can be minimized. The native and other vegetation will provide habitat and a food source for the Tipton kangaroo rat as well as for rabbits, ground squirrels, lizards, and insects and the like, comprising a food source for the San Joaquin kit fox and the blunt-nosed leopard lizard. Tipton kangaroo rats, if they use these areas at all, would likely use the upper portions of the berms for burrows rather than the basin areas where repeated flooding will occur, thus minimizing potential conflicts between kangaroo rats and the recharge operations. The presence of sensitive species in ponding-recharging basins should not be a basis for precluding use and maintenance of the basins."
7. The following section is added to Chapter 5: Potentially Significant Effects of Proposed Program and Proposed Mitigation.

### 5.3 Public Controversy Concerning Principle 12

Although Principle 12 is simply a reaffirmation of DWR's existing contractual obligation to make all reasonable efforts to complete the SWP, the inclusion of Principle 12 in this program has engendered substantial public comment. Inclusion of this Principle, because it makes no substantive change in the existing water supply contracts, has no environmental impacts. To eliminate the public concern, it is suggested that DWR and the contractors not include in the amendments implementing the Monterey Agreement Principles any amendment that incorporates Principle 12.

8. The word "effect" in the last line of the first paragraph of Section 6. Cumulative Effects, should have been "affects."
9. The sentence near the end of the section entitled "Retirement of 45,000 AF of Agricultural Entitlement" on p. 6-1 have been removed. The paragraph now reads:

No projects with similar impacts (the reduction of irrigated cropland use) have been sufficiently identified to allow specific analysis. ~~The impact to natural systems that may be the beneficiary of the retirement of this entitlement would not be expected to be significantly impacted (either positively or negatively)~~

~~since the receiving systems are able to accommodate the flow and already receive approximately 100 times this amount.~~ However, SWP operations would not be adversely affected by the reduction in entitlement or associated deliveries.

10. Cliff Schultz, an Attorney at Law with Kronick, Moskovitz, Tiedemann and Girard, was added to the EIR Preparers and Contributors (Section 8) as part of the State Water Contractors (Monterey Agreement EIR Oversight Committee).

## 4.0 PUBLIC COMMENTS ON THE DEIR

Public comments were received from the following organizations, governmental agencies and individuals listed immediately below. They are listed in order of the comment date.

Number	Commenter	Date
1	Environmental Defense Fund	June 7, 1995
2.	Citizens Planning Association of Santa Barbara County, Inc.	June 11, 1995
3.	Dorothy Green	June 12, 1995
4.	Central Delta Water Agency	June 19, 1995
5.	Natural Resources Defense Council	June 19, 1995
6.	Pacific Institute	June 20, 1995
7.	The Bay Institute	June 20, 1995
8.	Environmental Defense Fund	June 20, 1995
9.	Plumas County, Department of Public Works	June 20, 1995
10.	Eric Greening	June 21, 1995
11.	City of Stockton	June 21, 1995
12.	Environmental Defense Center	June 21, 1995
13.	Planning and Conservation League	June 21, 1995
14.	Environmental Defense Fund	June 21, 1995
15.	Chevron Pipe Line Company	June 22, 1995
16.	Susan Ayres	June 22, 1995
17.	Kern County Water Agency	June 23, 1995
18.	Canyons and Streams Alliance	June 23, 1995
19.	Natural Heritage Institute	June 23, 1995
20.	Sierra Club, Bay Chapter Water Committee	No Date
21.	California Department of Fish and Game	June 29, 1995
22.	Citizens Planning Association of Santa Barbara County, Inc.	July 10, 1995
23.	Citizens Planning Association of Santa Barbara County, Inc.	July 11, 1995
24.	Plumas County, Department of Public Works	July 11, 1995
25.	Citizens Planning Association of Santa Barbara County, Inc.	July 14, 1995
26.	California Sportfishing Protection Alliance	July 18, 1995
27.	California Department of Fish and Game	July 20, 1995
28.	Pacific Institute	July 20, 1995
29.	Environmental Defense Fund	July 20, 1995
30.	The Bay Institute	July 20, 1995
31.	Canyons and Streams Alliance	July 20, 1995
32.	Natural Resources Defense Council	July 21, 1995
33.	Environmental Defense Center	July 21, 1995



California Office  
Rockridge Market Hall  
5655 College Ave.  
Oakland, CA 94618  
(510) 658-8008  
Fax: 510-658-0630

June 7, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

Dear Mr. Masnada:

I write for three reasons. The first is to complain that the Environmental Defense Fund was not on your service list for distribution of the draft EIR you recently issued on the so-called Monterey Agreement. 1

The second is to request an extension until at least the end of July to comment on this very important document. EDF is particularly concerned about the draft EIR's failure to analyze the environmental effects of completing the State Water Project, as is contemplated by section 12 of the Agreement. 2 3

Independent of whatever you and other supporters of the Monterey Agreement might determine it is appropriate to include in an EIR (which, of course, ultimately is reviewable in a court of law), my third request is to ask you and your consultants directly for your thorough assessment of this issue, whether in the EIR format or otherwise. I look forward to your response.

Sincerely yours,



Thomas J. Graff  
Senior Attorney

TG:pgf

cc: Bob Potter, DWR  
Steve Macaulay, SWC  
Tim Quinn, MWD  
Tom Clark, KCWA

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JUN 09 1995

C.C.W.A.

National Headquarters

257 Park Avenue South  
New York, NY 10010  
(212) 505-2100

1875 Connecticut Ave., N.W.  
Washington, DC 20009  
(202) 387-3500

1405 Arapahoe Ave.  
Boulder, CO 80302  
(303) 440-4901

128 East Hargett St.  
Raleigh, NC 27601  
(919) 821-7793

1800 Guadalupe  
Austin, TX 78701  
(512) 478-5161

COMMENTER 2



CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.

June 11, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

JUN 16 1995

Dear Dan;

- 1 | The Citizens Planning Association Water Committee requests a 60 day extension for comments on the Monterey Agreement. We also request public hearings to be held in Northern, Central and Southern California for the purpose of public input on this very important document.

The Monterey Agreement has the potential of tremendous adverse effect on the economic and environmental quality of the state of California and as such, needs a through review. Most of us were not aware that the document existed until a few weeks ago and thus need more time to be able to submit comments. Likewise we feel that public hearing around the state are essential for due process.

Please let us know immediately. Thank you.

Sincerely,

*Carolee K. Krieger*

Carolee K. Krieger  
Co-Chair Water Committee  
Citizens Planning Association

cc: David Kennedy (DWR)  
✓ Steve Macaulay (SWC)

COMMENTER 3

DOROTHY GREEN  
801 HOLMBY AVENUE LOS ANGELES, CA 90024  
Phone: 310-270-4151 Fax: 310-270-4152

June 12, 1995

Dan Masnada  
Central Coast Water Authority  
225 Industrial Way  
Buellton, CA 93427

RE: Draft EIR on the Implementation of the Monterey Agreement

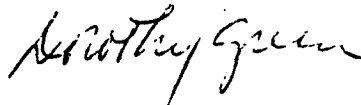
Dear Mr. Masnada:

I have just received a copy of the Draft EIR on the Monterey Agreement. It is a long and complicated document that requires careful study.

I would greatly appreciate it if you could extend the comment period by 60 days so that I and my colleagues could do the report justice. | 1

Thank you.

Sincerely,



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JUN 13 1995  
C.C.W.A.



COMMENTER 4

## CENTRAL DELTA WATER AGENCY

235 East Weber Avenue • P. O. Box 1461 • Stockton, CA 95201  
Phone 209/465-5883

DIRECTORS  
George Bragdon  
Ruf. W. M. M. M.  
Alfred R. Duckerman  
COUNSEL  
Santa and Venerable  
Thomas M. Duckerman

June 19, 1995

Via Fax (805) 965-6944  
and UPS Overnight Mail

Central Coast Water Authority  
255 Industrial Way  
Buellton, California 93427-9565

Attention: Dan Masnada

Re: Draft Environmental Impact Report - Implementation of  
the Monterey Agreement - May, 1995

Dear Sir:

Thank you for the opportunity to comment. Surprisingly, what we expected to be a matter of water contractor internal affairs has a number of aspects of Statewide importance.

1 Principles 1 & 2

We are concerned with the revision to the methodology used to allocate water among contractors and particularly Principles 1 & 2 of the Statement of Principles which would delete Article 18(b) through the end of subparagraph (1) of the SWP contracts. The proposal would appear to delete any priority for water deliveries to the Delta and other areas and watersheds of origin. As environmental water needs and development increase in Northern California, the water needs and shortages are becoming more acute. Along with the demands associated with development, there are demands for water to restore a number of over drafted ground-water basins. There are increasing demands for higher "in stream" flows, larger minimum reservoir pools for recreation and more water for wetlands. Without new water development, some of the growing water needs of Northern California will likely be met by a recapture of water being exported by the SWP and CVP.

It is contemplated that the area of origin and watershed protection statutes would in part be implemented through contracts with Department of Water Resources and the Bureau. The

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C.C.W.A.



June 19, 1995

proposed SWP contract provisions would appear to delete the priority for water use in the Delta and other areas and watersheds of origin. The promise that only water surplus to the present and future needs of "Northern California" will be exported is the cornerstone of a fair and rational water policy.

California Water Code Section 11460 provides as follows:

**"§11460. Prior right to watershed water**

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

It would appear that Department of Water Resources participation in a proposal to delete the priority for contracts for water use in the "watersheds of origin" would constitute a violation of Water Code Section 11460. The Draft EIR does not directly address this issue or the environmental impacts thereof.

We believe there are a number of significant adverse environmental impacts which should be addressed in the EIR relative to Principles 1 & 2.

The shift of water away from the "watersheds of origin" could result in greater consumption of energy, could result in loss of greater amounts of water due to evaporation and could result in loss of greater amounts of water by way of seepage into unusable underground waters.

Much of the future urban development in the Metropolitan Water District Service area is expected to take place in the "desert" rather than in the "coastal" or "inland valley". Average residential water use in the "desert" is in the 450-480 gallons per household per day range. (See attached exhibits.) The comparable average residential water use for the "inland valley" and "coastal" areas are respectively 360-370 and 250-290 gallons per day. The water use in the "watersheds of origin" tributary to the Delta is comparable to that in the "inland valley". Based on residential consumptive use alone, it will take about 30% more water to provide future housing in the desert area of the Metropolitan Water District than in the "watersheds of origin".

1

June 19, 1995

1 In addition, there are substantial evaporative and seepage losses in the transport and intermediate storage of the exported water.

Aside from the additional loss of water, there is a very substantial use of power in transporting and lifting the water to "Southern California". The amount of energy required to deliver the same water within the "watersheds of origin" would vary depending upon the specifics but would in every case be substantially less than delivery to areas south of the Tehachapi Mountains.

There are numerous other impacts when water use in export areas is compared to use within the "watershed" such as the timing and quantity of return flows to the streams and the impact on the "in-watershed" groundwater basins. If the exported water must be made up from groundwater, the groundwater basin could be overdrafted or the overdraft aggravated. The recharge of the groundwater basins could also be adversely impacted by the reduced surface water application within the watershed.

Economic impacts of shifting water needed in the "watersheds of origin" to export areas are substantial and should be discussed.

2 Principle 7

The new category of "interruptible water" to be delivered at the melded SWP power rate could result in what is a significantly subsidized use of water. Since the project costs are allocated based upon entitlement, the "interruptible water" could be priced without an increment to account for the cost of the project facilities. The impacts associated with the potential subsidies should be discussed. Increased irrigation of marginal lands and crops and the creation of a perpetual dependence upon what is supposed to be an interim supply should be discussed. As will be discussed below, the subsidy inherent in paying the melded SWP power rate rather than the fair market price should be considered.

3 Principle 8

The right to transport non-project water in SWP facilities at the melded SWP power rate is another subsidy to project contractors. The SWP incorporates at least three major subsidies from the people of the State of California.

First is the direct cash infusion from the tideland revenues together with the interest which could have been earned there-

Central Coast Water Authority  
Attn: Dan Masnada

4

June 19, 1995

from. There are steps underway to repay the principle but the interest remains as a subsidy.

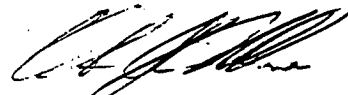
3

Second, the use of the credit power of the State through the general obligation bond funding provided a significant reduction in interest costs, and

Third, the incorporation of the hydroelectric power sites and facilities as part of the SWP project features gave the project contractors the benefit of one of the few economically advantageous hydro power locations in the State. To the extent the surplus power is provided at less than the fair market price, the transport of nonproject water is being subsidized. While it can be argued that the people of the State consented to the subsidy of delivery of entitlement water, no such argument can be made as to the nonproject water or "interruptible water". Not only is there a possibility for a disproportionate benefit or unfairness among the SWP contractors, but there is clearly an unfairness to those people of the State who pay the fair market price for energy.

Further subsidy to the SWP contractors will encourage water use in their respective service areas as opposed to use in other areas. The various impacts of such a subsidy are significant and should be discussed.

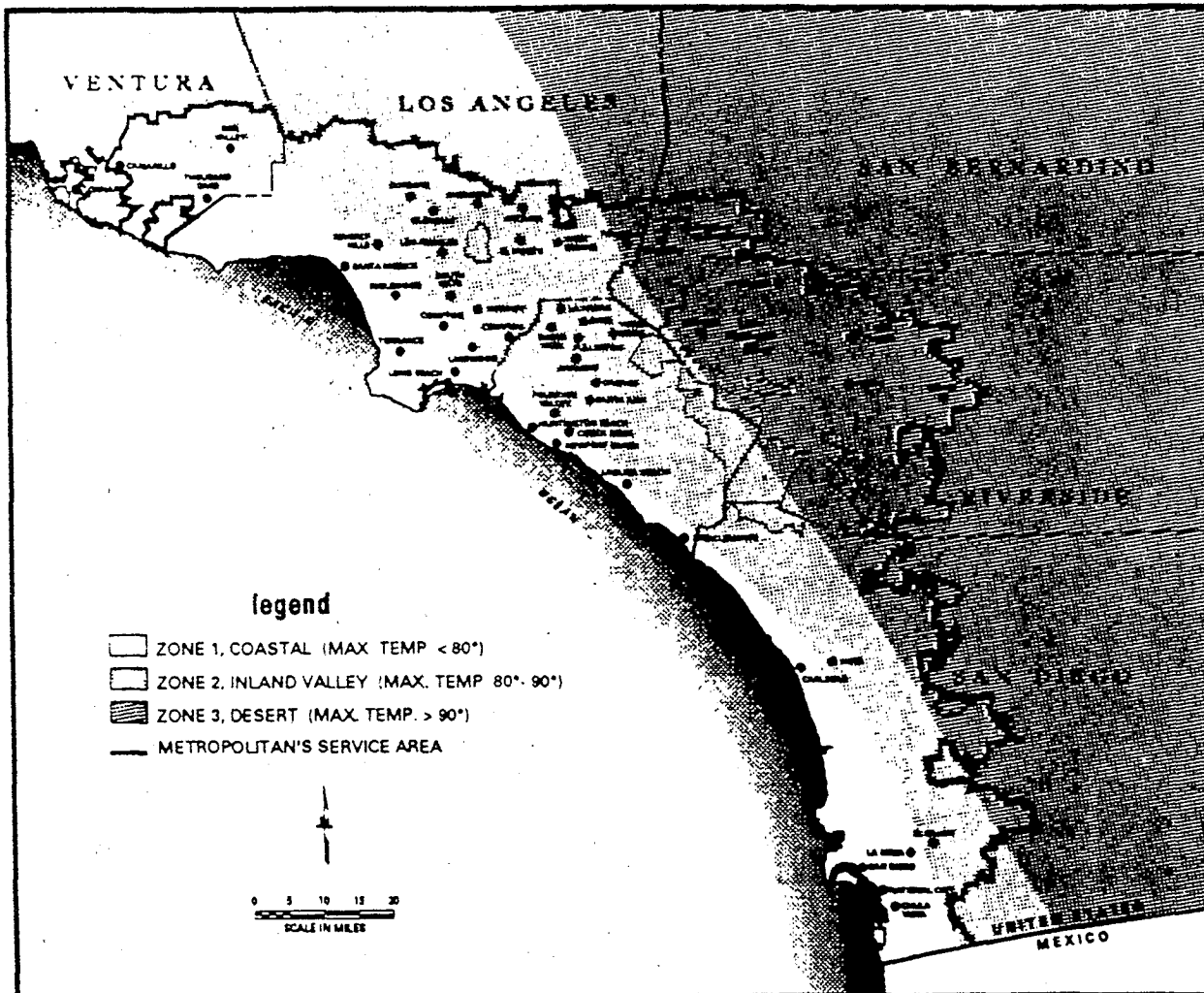
Respectfully submitted,



DANTE JOHN NOMEILLINI  
Manager and Co-Counsel

DJN:ju  
Enclosure

# METROPOLITAN'S SERVICE AREA



**TABLE 5**  
**SUMMARY OF KEY DEMOGRAPHICS**  
**FOR METROPOLITAN'S SERVICE AREA**

	1990	1995	1997	2000	2010
Population (Millions)	14.9	16.3	16.8	17.6	20.3
Households (Millions)	5.1	5.5	5.7	6.0	7.1
Family Size	2.91	2.97	2.96	2.96	2.86
Jobs (Millions)	7.3	7.5	7.8	8.3	10.2
Household Income (1980 Dollars)	22,800	23,300	23,900	24,900	27,700

Source: 1990 Census and CCSCE (1992).

## AVERAGE RESIDENTIAL WATER USE BY CLIMATE REGION

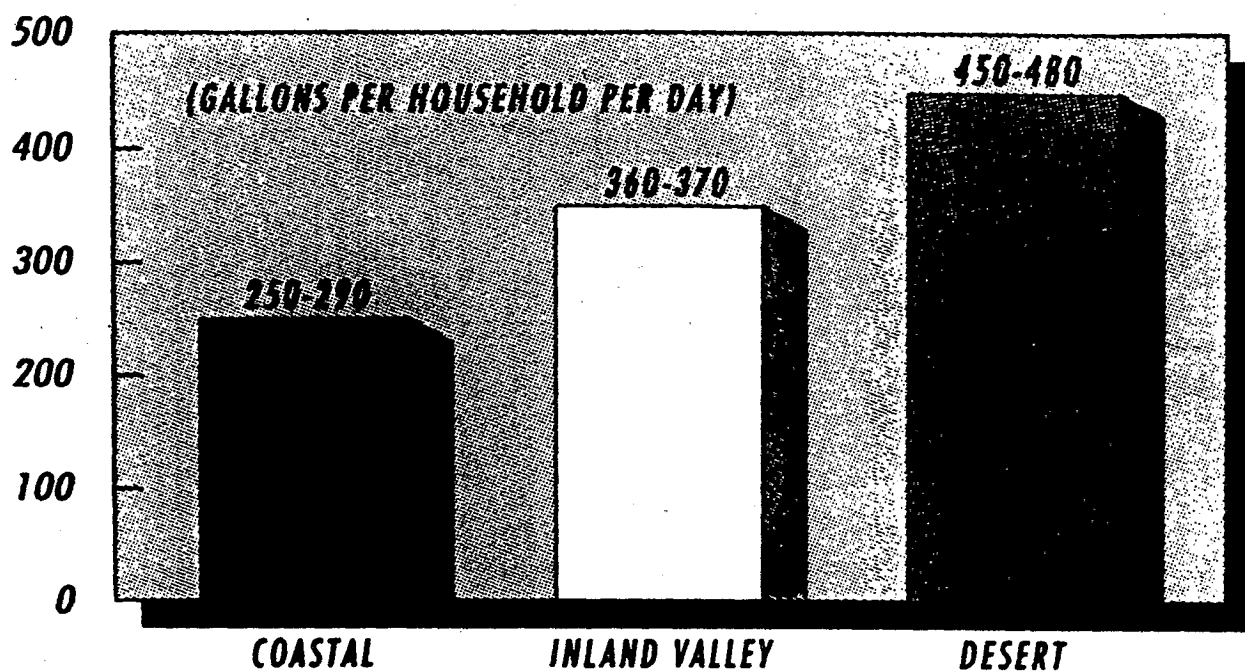


Table 1  
NEED FOR DELTA WATER Based on  
Comparison of **EXISTING DEPENDABLE** Water Supplies  
and Demands for Metropolitan's Service Area  
(million acre-feet)

	<u>Year</u>		
	<u>1995</u>	<u>2000</u>	<u>2010</u>
<b>Existing Non-Delta Water Supplies</b>			
Local Surface Water and Groundwater	1.08	1.06	1.05
Wastewater Reuse	0.28	0.34	0.40
Imported			
Los Angeles Aqueduct*	0.30	0.30	0.30
Colorado River	<u>0.62</u>	<u>0.62</u>	<u>0.62</u>
Total	2.28	2.32	2.37
<b>Projected Water Demands</b>			
(With Implementation of Urban Water Conservation Best Management Practices)			
Normal Projection	3.86	4.09	4.73
Above-Normal Projection	4.11	4.36	5.04
<b>Need for Delta Water**</b>			
Based on Normal Demands	1.58	1.77	2.36
Based on Above-Normal Demands	1.83	2.04	2.67

\*Average annual supply available during a repeat of an extended dry period.

\*\*Excludes need for Delta water for carryover storage.

Table 2

**NEED FOR DELTA WATER Based on  
Comparison of EXISTING PROBABLE MINIMUM Water Supplies  
and Demands for Metropolitan's Service Area**

(million acre-feet)

	<u>Year</u>		
	<u>1995</u>	<u>2000</u>	<u>2010</u>
<b>Existing Non-Delta Water Supplies</b>			
Local Surface Water and Groundwater	1.08	1.06	1.05
Wastewater Reuse	0.28	0.34	0.40
Imported			
Los Angeles Aqueduct*	0.22	0.22	0.22
Colorado River	<u>0.62</u>	<u>0.62</u>	<u>0.62</u>
Total	2.20	2.24	2.29
<b>Projected Water Demands</b>			
(With Implementation of Urban Water Conservation Best Management Practices)			
Normal Projection	3.86	4.09	4.73
Above-Normal Projection	4.11	4.36	5.04
<b>Need for Delta Water**</b>			
Based on Normal Demands	1.66	1.85	2.44
Based on Above-Normal Demands	1.91	2.12	2.75

\*Average annual supply available during a repeat of a severe drought. The minimum supply available in any one year could be less as evidenced by the amount of Los Angeles Aqueduct water available in 1990 and 1991.

\*\*Excludes need for Delta water for carryover storage.





Natural Resources  
Defense Council

COMMENTER 5

71 Stevenson Street  
San Francisco, CA 94105  
415 777-0220  
Fax 415 495-5996

June 19, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

Dear Mr. Masnada,

The Natural Resources Defense Council (NRDC) respectfully requests a 60 day extension in the comment period on the EIR for the Monterey Agreement. We only recently received the EIR and have not had time to adequately review the document. The Monterey Agreement represents important changes in water policy and the EIR deserves careful review. | 1

Please let us know as soon as possible whether this extension has been granted.

Sincerely,

Ronnie Ann Weiner  
Resource Specialist

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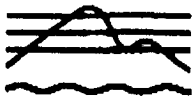
1350 New York Ave., N.W.  
Washington, DC 20005  
202 783-7800  
Fax 202 783-5917

6310 San Vicente Blvd., Suite 250  
Los Angeles, CA 90048  
213 934-6900  
Fax 213 934-1210

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PACIFIC INSTITUTE  
FOR STUDIES IN DEVELOPMENT, ENVIRONMENT, AND SECURITY

June 20, 1995

COMMENTER 6

BY FAX

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, Ca. 93427-9565

**Re: Preliminary Comment on Draft Environmental Impact Report on Implementation of the Monterey Agreement, and Request for Extension of Official Comment Period**

Dear Mr. Masnada:

1 This letter is a formal request for an extension of the official comment period and is submitted as a preliminary comment on the Implementation of the Monterey Agreement by the Pacific Institute for Studies in Development, Environment, and Security of Oakland, California.

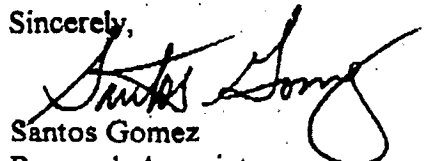
We request an extension of the official comment period because we did not receive the Draft Environmental Impact Report (DEIR) until June 21, and because a number of other interested key parties do not seem to have received the document or notice of its availability with sufficient time to prepare thorough comments. Further, because implications of the potential impacts of the Monterey Agreement are broad we request that the official comment period be extended past the June 23 deadline.

2 Although we have not had sufficient time to prepare a detail analysis of and comments on the DEIR, several major shortcomings are apparent from our preliminary review of the document. First, although it appears that the impacts associated with the implementation of Principle 4 of the Monterey Agreement are addressed, and under some scenarios a questionable finding of no "significant impacts" reached, the DEIR lacks a discussion of mitigation measures to address "third-party" impacts. Further, the DEIR lacks any discussion of what the expeditious approval process means for public participation in water transfers.

3 Second, it appears that the implementation of Principles 2b and 12 of the Monterey Agreement are not addressed, and would likely cause substantial adverse impacts. Principle 2b would eliminate the initial supply reduction to Agricultural Contractors. Principle 12 commits the department of Water Resources to complete the State Water Project. The omission in the DEIR of consideration of the impacts of implementing these provisions is a serious flaw.

4 We would appreciate your response to whether the official comment period will be extended. Please contact me by phone at (510) 251-1600 or by fax at (510) 251-2203 if you have any questions regarding this letter.

Sincerely,

  
Santos Gomez  
Research Associate

# The Bay Institute of San Francisco

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June 20, 1995

BY FAX AND BY MAIL

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, Ca. 93427-9565

Re: Preliminary Comment on Draft Environmental Impact  
Report on Implementation of the Monterey Agreement, and  
Request for Extension of Comment Period

Dear Mr. Masnada,

This letter is submitted as a preliminary comment by The Bay Institute of San Francisco on the Draft Environmental Impact Report (DEIR) on Implementation of the Monterey Agreement, with a formal request for an extension of the comment period.

Because we did not receive the DEIR until June 16, because a number of other parties do not seem to have received the document or notice of its availability, and because of the scope of the potential impacts of implementing the Monterey Agreement, we request that the period for comment be extended past the June 23 deadline.

Although we have not had sufficient time to prepare a detailed analysis of the DEIR, at least one major shortcoming is apparent from our preliminary reading of the document. Implementation of Principles 2b and 12 of the Monterey Agreement do not appear to be addressed in any form. Principle 2b would delete Article 18(b) from State Water Project contracts, and Principle 12 commits the Department of Water Resources to complete the State Water Project. However, invocation of Article 18(b) is currently justified, since water supplies from the San Francisco

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625 Grand Avenue, Suite 250 San Rafael, CA 94901 (415) 721-7680  
Fax (415) 721-7497

JUN 22 1995

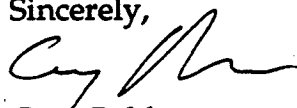
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- 2 | Bay/Delta estuary and its Central Valley watershed are extremely overallocated, and the State Water Project entitlements based on estimated yield of approximately 4.2 million acre-feet can not be achieved under any conditions. Furthermore, water quality regulations that reduce the current level of diversion and export from the estuary have been recently adopted by the U.S. Environmental Protection Agency and the California State Water resources Control Board. Therefore, a condition of permanent shortage exists, and State Water supply contracts should be altered
- 3 | accordingly. Failure to do so, and to instead proceed with implementation of provisions 2b and 12 of the Monterey Agreement, would cause extensive and severe adverse impacts on the aquatic environments of the Bay/Delta estuary. The omission of consideration of the impacts of implementing these provisions in the DEIR is a serious flaw.

We would appreciate your response as to whether the comment period will be extended. Please contact me at (415) 721-7680 if you have any questions regarding this letter.

Sincerely,



Gary Bobker  
Policy Analyst

cc: interested parties



California Office  
Rockridge Market Hall  
5655 College Ave.  
Oakland, CA 94618  
(510) 658-8008  
Fax: 510-658-0630

June 20, 1995

Dan Masnada  
Central Coast Water Authority  
Fax: (805) 686-4700

Dear Mr. Masnada,

Your staff person stated in a June 20, 1995 conversation that the comment period for the Monterey Agreement would be extended until July 21st, 1995 for those who request such an extension.

On behalf of Environmental Defense Fund, I respectfully request permission for an extension of the comment period for the Monterey Agreement. | 1

Please confirm this request in writing by fax, or mail and a phone call.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Yolles', is written over a horizontal line.

Peter Yolles

cc: Tom Graff, David Yargas

*National Headquarters*

257 Park Avenue South  
New York, NY 10010  
(212) 505-2100

1875 Connecticut Ave., N.W.  
Washington, DC 20009  
(202) 387-3500

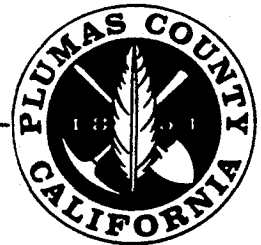
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(303) 440-4901

128 East Hargett St.  
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(919) 821-7793

1800 Guadalupe  
Austin, TX 78701  
(512) 478-5161

# DEPARTMENT OF PUBLIC WORKS

1834 EAST MAIN, QUINCY, CA 95971 TELEPHONE (916) 283-6268 FAX 283-6323



COMMENTER 9

June 20, 1995

Central Coast Water Authority  
255 Industrial Way  
Buelton, CA 93427-9565

**TOM HUNTER**  
DIRECTOR

**RICHARD HUMPHREY**  
DEPUTY DIRECTOR OF PUBLIC WORKS

**MARTIN BYRNE**  
ASST. DIRECTOR OF PUBLIC WORKS

Attn. Dan Masnada, Executive Director

Dear Dan,

Plumas County has only recently become aware of the Monterey Agreement. Last week I ordered two copies of the Draft EIR. These copies should arrive any day.

- 1 Without these documents, we have not had a chance to determine if the Monterey Agreement and its provisions are beneficial to the Plumas County Flood Control and Water Conservation District. I understand that Article 18b of the water supply contract may be altered as a part of the Monterey Agreement. Also, Principle 12, regarding future SWP improvements, may have a large impact on our County.
- 2 I understand that the comment deadline for the Draft EIR is June 24, 1995. I am requesting that this deadline be extended until the end of August so that we may have the necessary time to consider the proposal and prepare a response.

Please let me know your decision on the extension of the comment period and please enter our names on the mailing list for further consideration of this proposal.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Hunter", is written over a horizontal line.

Tom Hunter  
Director of Public Works

cc: Board of Supervisors  
CAO  
County Counsel

COMMENTER 10

June 21st, 1995

Dan Maenada, Executive Director  
Central Coast Water Authority  
255 Industrial Way,  
Buellton, CA, 93427-9555

Dear Mr. Maenada,

Here are my comments about the Draft Environmental Impact Report on Implementation of the Monterey Agreement:

I agree that the Monterey Agreement is superior to the other alternatives analyzed on pp. 2-15 through 2-17. Groundwater Storage is certainly wiser than construction of new surface reservoirs, which are subject to evaporation and siltation, and usually cause highly deleterious environmental impacts. I do believe that a Conservation Investment Alternative ought to be analyzed alongside the other alternatives: it might prove to be superior to all others, environmentally and from a practical economic standpoint. Such an alternative would redirect a reasonable proportion of funds currently reserved for such major construction efforts as Los Banos Grandes into aggressive programs to provide contractors with water-saving devices and technologies. Such fund diversion could be justified if the program delayed or obviated the need for the expensive engineering works. Perhaps incentives could be negotiated into contracts such that contractors who successfully achieve conservation targets would be a few percentage points ahead in deliveries during years of shortfall. The capacity of water districts to get serious about conservation efforts has been proven by Los Angeles in relation to the resolution of the Mono Lake dispute.

One thing that is never made completely clear (to me, at any rate) is whether the Monterey Agreement presently binds all State Water Contractors, or whether entities can, in the future, join, or secede from, or significantly change the terms of the agreement. This should be clarified. Obviously, there is a range of scenarios as to just how the agreement might be implemented. The range of scenarios analyzed should include any possible scenarios regarding potential changes in participation or non-participation in the agreement.

The sentence which straddles pp. 3-1 and 3-2 needs rewriting and explaining. I would like to believe that effects in areas relinquishing agricultural entitlements would be centered on agricultural practices, and would welcome policies to help achieve that end, but recent experience in Kern County seems to indicate that the actual effect is usually abandonment of farming operations.

The urban end of the equation needs revision, too. The acquisition of water entitlement often leads, not to growth accommodation, but to growth stimulation. If acquisition raises the cost (overall, certainly, and often also the unit cost) of water to the point where the existing rate base starts to hurt, then the acquiring areas may well seek to spread the pain by encouraging, and charging significant fees for, new water hookups. Acquisition can also give land-use agencies a disproportionate sense of security that resource constraints have been lifted, thus diverting growth into areas where it otherwise would not have gone.

The socioeconomic analysis on p. 3-22 should mention that, while the increased availability of water supplies in importing areas may increase some economic activities, the growth it stimulates could lead to a decline in others, particularly agriculture. Recent studies by the Rocky Mountain Institute and the Bank of America have shown that local governments tend to be subsidized by areas which are in productive agriculture, while areas of scattered suburban development have to be subsidized.

From what I know of the sites of possible direct impacts, the site-specific analysis appears to be of high quality. But the water transfers proposed, and changes in rules for such transfers, raise a rat's nest of issues which need to be thoroughly explored in the Final EIR. I hope you rise to the challenge, welcome the opportunity to comment.

and I

Thank you,

*Eric Greening*  
Eric Greening  
7365 Vallejo Ave.  
Atascadero, CA, 93422



## CITY OF STOCKTON

DEPARTMENT OF MUNICIPAL UTILITIES  
2500 NAVY DRIVE  
STOCKTON, CA 95208-1191  
(209) 937-6750  
FAX (209) 937-8708

BY FAX

June 21, 1995

Central Coast Water Authority  
255 Industrial Way  
Buellton CA 93427-9565

Attention: Dan Masnada

DRAFT ENVIRONMENTAL IMPACT REPORT: IMPLEMENTATION OF THE  
MONTEREY AGREEMENT: MAY, 1995

- 1 | It has come to our attention that the implementation proposals contained in the "Monterey Agreement" may have significant ramifications for water users in this area. Would you therefore please send us a copy of the referenced draft environmental impact report for review and comment.

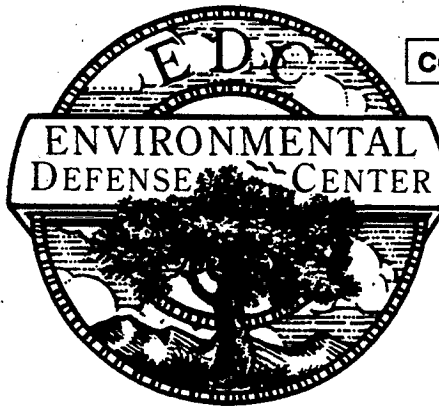
If there will be a charge for furnishing this agency a copy of the report, please submit your billing, and we will be happy to remit the cost.

Thank you for your cooperation in this matter.

MORRIS L. ALLEN  
DIRECTOR OF MUNICIPAL UTILITIES

MLA:ma





COMMENTER 12

June 21, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

BY MAIL AND FAX  
(805) 686-4700

RE: Monterey Agreement Draft EIR

Dear Mr. Masnada:

I write to concur with the recommendations of my colleagues throughout the state who have requested an extension of the public comment deadline for the Monterey Agreement Draft EIR. The proposed programmatic implementation of the Monterey Agreement raises numerous concerns that transcend the significance of the State Water Project within the Central Coast region. We have previously submitted comments questioning CCWA's lead agency status for this project; there should be no question, however, that the Monterey Agreement implicates issues of statewide significance.

Thus, regardless of which entity functions as lead agency, the designated lead agency has a responsibility to provide an opportunity for public review that is commensurate with the scope of the project. We ask, therefore, that CCWA accommodate the inevitable statewide concern associated with the implementation of the Monterey Agreement by (1) extending the public comment deadline by sixty days and (2) conducting regional hearings on the Draft EIR.

Thank you for your consideration of this request. Should you have any questions, please do not hesitate to contact this office.

Sincerely,

John T. Buse  
Staff Attorney  
Environmental Defense Center

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JUN 23 1995

C.C.W.A.

906 GARDEN STREET SUITE 2 SANTA BARBARA CA 93101

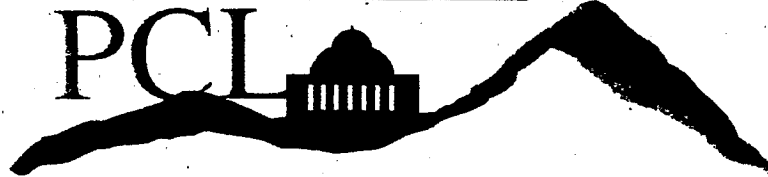
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June 21, 1995

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Central Coast Water Authority  
 255 Industrial Way  
 Buelton, CA 93427-9565

RE: Draft EIR For Monterey Agreement Implementation  
 (State Clearinghouse # 95023035)

Dear Ladies and Gentlemen:

I have had an opportunity to review the Draft EIR for the "Implementation of the Monterey Agreement," dated May 1995, which has been circulated for comment by the Central Coast Water Authority. The Central Coast Water Authority has been designated as the lead agency for the purposes of CEQA compliance by the State Department of Water Resources and the other signatories to the "Monterey Agreement--Statement of Principles," which is attached as Appendix A to the Draft EIR.

I appreciate the opportunity to submit the following comments:

- 1 (1) The Draft EIR for the Monterey Agreement is stated to be a "Program EIR." The State EIR Guidelines discuss the use of a "program EIR" at Section 15168, and the value and use of a program EIR is very helpfully discussed in Guide to the California Environmental Quality Act (CEQA), by Michael H. Remy et. al., which is generally considered to be one of the most definitive reference works providing guidance to the use of CEQA.

The Remy book states, at page 249:

"...program EIRs also can serve another important function: providing a single environmental document that can allow an agency to carry out an entire 'program' without having to prepare additional site-specific EIRs or negative declarations. To effectively serve this second function, a program EIR must be very detailed...."

It is my belief that the Draft EIR on the implementation of the Monterey Agreement is not adequately detailed to allow this draft, once completed as a final EIR, to be used as the legal foundation to allow the state and the other signatories to carry out the "program" described in the draft EIR. The lack of specificity in the Draft EIR is acknowledged in several places (for instance at page 3-3, where it is stated that "proposed projects resulting from implementation of the Monterey Agreement...will be evaluated...in future CEQA documents").

However, it needs also to be clear, I believe, that further environmental review will be necessary not only in connection with possible future "projects" of a physical nature, but also in connection with any proposal actually to implement, through new legal agreements, the fourteen statements of principle which comprise the Monterey Agreement.

1

(2) One of the reasons that the Draft EIR is not sufficiently detailed to allow it to be used as the legal basis for actual implementation of the proposed "program" is that the EIR review is being undertaken on what is simply a statement of "principles." By its very nature, this statement of principles--the "Monterey Agreement" which is the subject of the draft EIR--is highly generalized, and is thus not susceptible of detailed analysis. Similarly, the possible alternatives to this highly generalized set of principles can also not be definitively analyzed. Further environmental review will be needed, in my opinion, when one or more specific agreements are proposed to be signed, changing the legal arrangements currently prevailing under existing contracts and state law, to be consistent with the "principles" articulated in the Monterey Agreement.

(3) One difficulty in understanding (and thus analyzing) the proposal in detail, is in understanding whether the "principles" articulated in the Monterey Agreement are intended to replace the contracting principles contained in the current long-term water supply contracts that govern the State Water Project.

2

It is my understanding that the long-term water supply contracts currently governing the operations of the State Water Project incorporate specific contracting principles that were scrutinized and reviewed by the Legislature, as well as by legal scholars and bond counsels throughout the country, before they were finally adopted by the Legislature on January 20, 1960. These principles, based on a utility theory for determining and recovering the costs of making water available to the contractors, were designed to protect the resources of the state of California, as well as to be fair and equitable to those purchasing water from the State Water Project.

If I understand the historical situation correctly, these contracting principles were then incorporated into the prototype contract with Metropolitan Water District of Southern California, and were well known to the electorate when it approved the Burns-Porter Act on November 8, 1960. Based on these contracting principles, the contracts with 31 long-term contractors were written to account for nearly every possible contingency in delivering water.

A body of legal interpretation has been developed since the first contract was signed in with Metropolitan Water District in 1960, and thus it is critical to know, in analyzing the "Monterey Agreement," whether the new principles included in the Monterey Agreement are intended to replace the original contracting principles, and whether each of the 45 or more articles of the original long-term contracts are to be examined in light of these new principles, and how

- 2 | the principles in the Monterey Agreement will relate to or change specific articles in the current long-term contracts.

Unless such fuller description of the proposal can be developed at this time, it is my opinion that the current EIR will not be sufficient to support action on actual new contracts, which will then (by their terms) either eliminate or reconfirm the contracting principles that currently determine the operations of the State Water Project.

(4) I am also unclear what is actually proposed as the methodology by which current contracts would be changed, to incorporate the principles outlined in the Monterey Agreement. Specifically, it is contemplated that the current contracts would be renegotiated and amended without approval by the Legislature?

Again, as I understand it, the laws currently governing the financing and operation of the State Water Project are contained in Chapter 8, "Water Resources Development Bonds," Sections 12930 through 12944, of the State Water Code, also known as the Burns-Porter Act. The Monterey Agreement, and hence the Draft EIR, appears to be written without specific reference to these sections in the Water Code, and it appears that the "principles" contained in the Monterey Agreement assume that a state agency, acting without specific authorization of the Legislature, has the authority to amend the long-term contracts. I question whether this is legally possible because it appears that the State Water Code contemplates that the Legislature itself is ultimately responsible for the contracts, and presumably must approve any change in them.

Funds for constructing the State Water Project were provided by the California Water Resources Development Bond Act, written and passed by the Legislature in 1959 and ratified by the people of California in the General Election of November 8, 1960. When the people of California ratified the Bond Act, they pledged the full faith and credit of the state of California for the punctual payment of both principal and interest on those bonds. Although the Legislature made provisions that all income and revenues derived from the State Water Resources Development System would serve as a lien against the bonds, the Legislature reiterated that the state of California ultimately shall remain liable for the payment of the principal and interest on all bonds authorized and issued, and as a result, Section 12937 of the Water Code mandates that the long-term contracts themselves include the following statement:

"This contract is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under the Bond Act, and the income and revenues derived from this contract are pledged to the purposes and in the priority set forth in this Act."

This would seem to indicate that any changes in the contract redirecting revenues from the contracts would need to be approved by the Legislature, which is the author of the Act to which the contract refers.

In addition, in Section 12937 of the Water Code, the Legislature itself qualified the role of the administering agency by stating:

2

"The department, subject to such terms and conditions as may be prescribed by the Legislature, shall enter into contracts for the sale, delivery, or use of water or power, or for other services and facilities, made available by the State Water Resources Development System with public or private corporations, entities, or individuals."

Additionally, in Water Code Section 12937, the Legislature prohibited itself from diminishing the long-term contracts during the time the bonds were outstanding by stating:

"Such contracts shall not be impaired by subsequent actions of the Legislature during the time when any of the bonds authorized herein are outstanding."

The Legislature has also expressly directed that excess monies or surplus revenues are to be used for the annual payment of principal and interest or for acquiring and constructing the system.

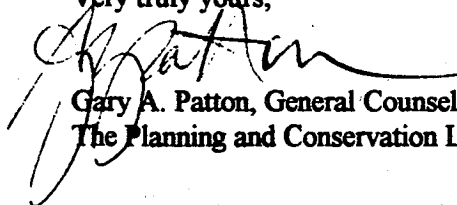
Consequently, it appears to me that several legal issues will need to be resolved before amendments included in the Monterey Agreement could be implemented. These legal issues certainly include a question about what effect such amendments would have on the holders and owners of all general obligation bonds issued under the Bond Act, and particularly those provisions contained in the Monterey Agreement, and found on pages 3 and 4 of Appendix A, which propose to set aside \$10 million for payments to agricultural contractors, and \$4 million to be distributed directly to Urban Contractors.

As indicated earlier, the legality of amending the current contracts by an agency other than the Legislature needs to be documented, and particularly when the principles contained in the Monterey Agreement call for transferring ownership of a State Water Project facility to the Kern County Water Agency, and allowing unregulated sale of water outside SWP boundaries, and restructuring debt payments in a way not contemplated in the original Legislative approval.

Because the resolution of these legal issues will themselves define the extent of the final project or "program" that the EIR is seeking to analyze, I believe that a further CEQA review will need to be undertaken at the actual time that contractual agreements are drafted, and proposed to be signed, to implement the "Monterey Agreement--Statement of Principles."

- 3 Thank you for the opportunity to make these comments on the Draft EIR. As you can see, my main concern is with the definition of the "project" or "program" reviewed in the Draft EIR. It seems to me that an adequate environmental analysis cannot really be done until a final contractual proposal is actually advanced, demonstrating how the various legal issues raised herein will actually be resolved.

Very truly yours,



Gary A. Patton, General Counsel  
The Planning and Conservation League



*California Office*  
Rockridge Market Hall  
5655 College Ave.  
Oakland, CA 94618  
(510) 658-8008  
Fax: 510-658-0630

June 21, 1995

Susan F. Petrovich  
Hatch & Parent  
PO Box 720  
Santa Barbara, CA 93102-0720

Dear Ms. Petrovich:

Thank you for your letter of June 20, responding to my letter to Mr. Dan Masnada, in which EDF first requested an extension to file comments on the Monterey Agreement Draft EIR. We will do our best to file our comments on the draft EIR on or before your new deadline of July 21.

In the meantime, however, I wonder whether, as apparent legal counsel for the lead agency involved here, the Central Coast Water Authority, you would consider advising the drafters of the EIR to withdraw the document, because of its failure to analyze the environmental consequences of section 12 of the Agreement? We believe that section 12 is an essential term of the Agreement and that an EIR on the Agreement must analyze its environmental effects.

Truthfully, however, it is not the failure of the draft EIR to analyze these effects that most troubles EDF. It is the provision itself.

What I would recommend is that the Monterey Agreement proponents withdraw section 12 of the Agreement and sit down with a broad community of potential critics (and supporters) of the State Water Project completion concept to see whether a better provision could be devised in place of section 12. At the time the Agreement was being secretly negotiated, behind closed doors excluding EDF and other members of an interested public, I warned several of the key participants that this was a foolhardy strategy. We at EDF and many others have an interest in the State Water Project's future, which the Agreement does not acknowledge.

National Headquarters

257 Park Avenue South  
New York, NY 10010  
(212) 505-2100

1875 Connecticut Ave., N.W.  
Washington, DC 20009  
(202) 387-3500

1405 Ampalhue Ave  
Boulder, CO 80302  
(303) 440-4901

128 East Hargett St  
Raleigh, NC 27601  
(919) 821-7793

1500 Guadalupe  
Austin, TX 78701  
(512) 476-5555

100% Paid Consumer Product Photo

Susan F. Petrovich

June 21, 1995

Page 2

Fortunately, however, the time is still not too late to open the process to all comers. I look forward to your response.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Thomas J. Graff', with a stylized flourish at the end.

Thomas J. Graff  
Senior Attorney

cc: Clifford Lee, Esq., Deputy Attorney General  
Bob Potter, DWR  
Steve Macauley, SWC  
Tim Quinn, MWD  
Tom Clark, KCWA



**Chevron**

June 22, 1995

**Chevron Pipe Line Company**  
4000 Executive Parkway, Suite 400  
San Ramon, CA 94583  
P.O. Box 5059  
San Ramon, CA 94583-0959

Central Coast Water Authority  
225 Industrial Way  
Buellton, CA 93427-9565

**D. O. Culbertson**  
Site Remediation Specialist  
(510) 842-6930

Attention: Mr. Dan Masnada, Executive Director

Ladies and Gentlemen:

We have reviewed the draft Environmental Impact Report entitled, "Implementation of the Monterey Agreement Statement of Principles by the State Water Contractors and the State of California, Department of Water Resources for Potential Amendments to the State Water Supply Contracts." In particular, we are interested in the discussion on the Kern Fan Element of the Kern Water Bank. We note that there is no discussion of oilfield or pipeline issues, and no mitigative measures proposed to deal with those issues. We would refer you to the December, 1990 Feasibility Report and Draft Supplemental Draft Environmental Impact Report ("1990 SDEIR") prepared and circulated by the California Department of Water Resources for their discussion on oilfield and pipeline issues and proposed mitigation measures. We would also refer you to the discussion in the April, 1995 Negative Declaration prepared and adopted by the Kern County Water Agency for the 1995 Ground Water Recharge Project and the mitigation measures adopted therein.

We would suggest that you incorporate in your final EIR a discussion of oil field and pipeline issues at least to the level of the 1990 SDEIR, as well as adopt adequate mitigation measures when approving the implementation of the Agreement.

If you have any questions, or if you would like further information, please contact me at (510) 840-6930.

Very truly yours,

  
D. O. Culbertson

cc: Mr. Thomas N. Clark-Kern County Water Agency  
Mr. Jack A. Erickson-Dept. of Water Resources

**RECEIVED**

JUN 27 1995

C.C.W.A.

15-1

COMMENTER 16

HAND DELIVERED AT CENTRAL COAST WATER AUTHORITY MEETING:  
6/22/95

2910 Paseo Tranquillo  
Santa Barbara, CA 93106  
June 22, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, California 93427-9565

Dear Mr. Masnada:

- 1 | The writer hereby requests a 4-week extension in order to adequately prepare comments on the Draft EIR regarding Implementation of the Monterey Agreement: Statement of Principles by the State Water Contractors and the State of California, DWR for Potential Amendments to the State Water Supply Contracts.
- 2 | The writer also asks that Public Hearings be held throughout the State, with at least one hearing in Northern California, to gather public comment on this crucial public document.

Thank you.

Very truly yours,

  
Susan Ayres

SA:sa  
called\62295cwa



KERN COUNTY  
WATER AGENCY

MEMORANDUM

COMMENTER 17

TO: Dan Masnada, CCWA  
FROM: Kane Totzke  
DATE: June 23, 1995  
SUBJECT: Comments on Monterey DEIR

The Agency is preparing comments on the Monterey DEIR. Because of time constraints we will be unable to submit them today. We understand from talking with Mr. Richard Kentro, SAIC, that the Agency comments would be considered if FAXED by Monday, June 26, 1995. This FAX is to confirm that consideration. Please contact me (805) 634-1468, if you have any questions. 1

MR. DAN MASNADA  
EXECUTIVE DIRECTOR  
CCWA  
255 INDUSTRIAL WAY  
BUELLTON, CA 93427-9565

PHIL ASHLEY  
CANYONS & STREAMS ALLIANCE  
1586 LA CITA COURT  
SAN LUIS OBISPO, CA 93401  
805-756-2505 (WORK)  
" 544-9741 (HOME)  
JUNE 23, 1995, FRIDAY

SUBJECT: CASA'S COMMENTS ON THE DRAFT EIR FOR THE  
MONTEREY AGREEMENT.

DEAR MR. MASNADA:

CASA IS REQUESTING THAT WE BE ADDED TO THE LIST OF ENTITIES RECEIVING AN EXTENSION TO COMMENT IN WRITING ON THE SUBJECT DRAFT EIR. WE FURTHER REQUEST THAT DUE TO THE MAGNITUDE AND STATEWIDE IMPACTS, POTENTIAL OR OTHERWISE, THE PUBLIC COMMENT PERIOD BE EXTENDED AT LEAST 60 DAYS BEYOND TODAY. WE ALSO REQUEST SEVERAL PUBLIC HEARINGS THROUGHOUT THE STATE TO ADDRESS WHAT IS APPEARING INITIALLY TO BE, READING BOTH LINES AND BETWEEN THEM IN THE DEIR, A LOPSIDED AGREEMENT FAVORING A FEW SOUTHERN CALIFORNIA AREAS AT THE EXPENSE OF OTHER AREAS -- AGAIN!

PLUS, EVEN AT FIRST GLANCE, WE SEE THIS AGREEMENT AS ANOTHER STRONG PUSH FOR THE PERIPHERAL "CANAL" PROJECT, THOUGH THE DEIR SEEMS TO BE VERY SUBTLE IN ITS ADMISSION OF THIS, I. E., THE DESIRE TO FINISH THE STATE WATER PROJECT. WHAT ELSE COULD THAT MEAN THAN TO PUSH THROUGH THE PERIPHERAL CANAL? AND THAT BEING THE CASE, THE DEIR NEEDS A WHOLE SECTION ON THIS PROJECT DISCUSSING ALL OF TODAY'S RAMIFICATIONS, NOT YESTERDAY'S OR LAST DECADE'S, ETC., OF THE ENVIRONMENTAL IMPACTS OF THE P. C. PROJECT. THE EIR WILL BE VERY INADEQUATE WITHOUT FULL DISCLOSURE AND ENVIRONMENTAL IMPACT DISCUSSION <sup>ON</sup> THE P. C. PROJECT.

SINCERELY,  
Phil Ashley FOR CASA



Natural  
Heritage  
Institute

COMMENTER 19

114 SANSOME STREET, SUITE 1200  
SAN FRANCISCO, CA 94104  
TEL: (415) 288-0550/FAX: (415) 288-0555  
e-mail: nhi@igc.apc.org

Non-Profit Law and Consulting in Conservation of Natural Resources and the Global Environment

Gregory A. Thomas  
President

June 23, 1995

By Facsimile and First Class Mail

Margaret Goff  
Document Control  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 934277

RE: Draft Environmental Impact Report for Implementation of the  
Monterey Agreement

Dear Ms. Goff:

Per telephone instruction from your office this morning, the  
Natural Heritage Institute hereby requests a one month extension in  
which to comment on the above-referenced draft EIR. I understand  
that the Environmental Defense Fund and others have requested and  
received extensions to file comments on the draft until July 21 and  
we would appreciate the same curtesy. 1

Thank you very much for your cooperation in this matter.

Sincerely,

Cynthia L. Koehler  
Senior Attorney

NATURAL HERITAGE INSTITUTE

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JUN 26 1995  
C.C.W.A.

19-1

C-094947

C-094947

COMMENTER 20

Stuart Cohen  
Sierra Club Bay Chapter Water  
Committee  
5237 College Ave.  
Oakland, CA 94618

Dan Masnada  
Executive Director  
255 Industrial Way  
Buellton, CA 93427

Dear Mr. Masnada,

1 | The Bay Chapter of the Sierra Club respectfully requests a 30  
(thirty) day extension for the comment period of the Monterey  
Agreement. At this time we have not even received a copy of the  
document, let alone had time to comment on it. Thank you for your  
kind consideration of this request.

Sincerely,



Stuart Cohen  
Chair  
Bay Chapter Water Committee

## DEPARTMENT OF FISH AND GAME

1416 NINTH STREET

P.O. BOX 944209

SACRAMENTO, CA 94244-2090  
(916) 653-3540

June 29, 1995

Ms. Susan F. Petrovich  
Hatch and Parent  
21 East Carrillo Street  
Santa Barbara, California 93101

Dear Ms. Petrovich:

Limited initial circulation of the Draft Environmental Impact Report on the Implementation of the Monterey Agreement from the State Clearinghouse to the Department of Fish and Game caused a substantial delay in receipt of the document by appropriate units of the Department. Consequently, the Department has not completed its review of the document. The State Clearinghouse established June 29, 1995 as the compliance date for submitting comments to the lead agency, the Central Coast Water Authority (CCWA). When I contacted CCWA, they indicated you were responding to written requests for an extension of the comment period. We request an extension of the comment period until July 7, 1995 in order that we may complete our review and submit comments on the Draft Environmental Impact Report on the Implementation of the Monterey Agreement. 1

Thank you for your consideration of this request. If you have any questions, please call me at (916) 653-3540.

James R. White  
Environmental Specialist

cc: Mr. -Dan-Masnada  
Central Coast Water Authority  
Buellton, California

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JUL 03 1995

C.C.W.A.

21-1

C-094949

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COMMENTER 22

005630



CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.

Central Coast Water Authority  
225 Industrial Way  
Buellton, CA 93427-9565

7/10/95

Dear Sirs:

Please accept these comments and criticisms for the official record.

- 1 | Considering the broad scope of the Monterey Agreement and the inadequacies of the DEIR I would like to request an extension of time for the comment process.

The extension would be most useful to allow the CCWA to produce a more competent document, one that is commensurate with the scope of the proposed changes.

Respectfully,

A. R. Sjovold

Attachments

cc: David Kennedy (DWR)  
Steve Macaulay (SWC)

RECEIVED

JUL 18 1995

C.C.W.A.



**Comments of DEIR for  
Implementation of the Monterey Agreement**

**GENERAL CRITIQUE**

A careful reading of the Monterey Agreement ("Agreement") clearly reveals that this "project" amounts to a substantial change in the State Water Project (SWP) master contract. The DEIR, without identifying what the problem is, purports to claim the need for these contract changes. In fact the real purpose to be served by these changes is vague and the DEIR does little to clarify what that purpose might be.

An old maxim, rooted in common sense, holds, that if "something isn't broke, don't fix it." The DEIR fails to demonstrate that the existing contract needs fixing. In fact almost every "principle" or "objective" stated in the DEIR can be met within the terms of the existing contract. One would expect that the no project alternative would deal with the resolution of the SWP problems under the existing contract.

To illustrate, consider the following: The Agreement is intended to address the following conditions (we should note here that these are issues or problems):

1. Allocations of SWP water
2. Potential transfer of Entitlements
3. Greater reliability of water supply to all Contractors
4. Integration of SWP terminal reservoirs into local water supply systems
5. Stabilization of water rates

Of these five conditions, 1, 3, and 5 are all inextricably connected. The current resolution of these conditions involves the interpretations and contract implementations dealing with Articles 18(a) and 18(b) in the existing contracts. The current contract language in these two articles, especially 18(b), addresses quite clearly what the Department of Water Resources (DWR) must do in the face of the chronic deficit with the existing facilities; the total project yield must be redefined (lowered) to bring it into consonance with the project's capability to deliver.

3 When this is done, the problem associated with condition 1 is solved in the sense that Article 18(a) is now restored to its proper role of governing allocations when there are infrequent occurrences of shortages.

By redefining the project yield, entitlements will be reduced to where a request for full entitlement delivery will be met most of the time. Significant deficiencies will occur rarely and certainly will not compound over several consecutive years to the detriment of agriculture that was evident during the recent drought.

On the other hand, there will be years when the project will have true surpluses whose allocations are governed quite well under the existing contract. Agriculture would continue to get preferential treatment in access to surpluses which will go a long way to offset their disproportionate penalties in drought years.

Clearly, a redefined project yield, administered under the existing contract will result in a more reliable series of annual deliveries with effective water rates showing more stability. In fact, it is hard to imagine any scheme that would meet conditions 1, 3, and 5 in a better fashion.

The DEIR must analyze this "no project" alternative if we are to take any of it seriously. The analysis must include a parametric analysis of alternative levels of a lowered project yield tested by use of DWR's simulation model to establish which level of yield provides for the maximum reliability of deliveries given some tolerable threshold for failure to meet requests (i.e. with what frequency will Article 18(a) be allowed to be invoked and with what consequences.)

All this can be accomplished without modification of the existing contracts. Conditions 2 and 4 however, may take actions that deserve study in their own right.

4 The DEIR however, fails to clearly state what they are trying to accomplish and is vague in many instances concerning who will benefit and who will loose as a result of these changes. In fact, throughout the document these provisions can be read to create situations where there are intended beneficiaries who are not even part of the project.

This is evident throughout the document in reference to "non-contractor" participants. Who are these and why should the existing contractors care? No brief is included stating a "need" to serve non-contractors.

It appears that the agreements are trying to carve out a new set of potential participants under the guise of our existing problems. If there is one thing the SWP does **not** need, it is an increase in demands on this already chronically short project.

We have shown above that Articles 18(a) and 18(b) provide a remedy for the SWP's existing chronic shortage problems. The Monterey Agreement calls for a repeal of Article 18 (a) and 18(b) without ever demonstrating that they are defective in their task. The DEIR analysis of the No-project is a sham.

#### SPECIFIC DEFICIENCIES

There are many other statements throughout the DEIR that clearly call for clarification, back-up analyses, or outright correction. Some are minor but others are serious and demonstrate that the analysis in the DEIR has clearly not been thought through.

I will begin citing and discussing them in the order in which they appear.

Page 1-1: The first paragraph should note that an EIR is also a "full-disclosure" document that is to serve as a substantial basis for findings leading to a decision. The DEIR references to an "informational document" misleads as to the spirit of CEQA.

The second paragraph identifies CCWA as the "lead agency". In point of fact, **CCWA is not a State Water Contractor** and even if it was a contractor it does not meet the requirement for a "lead agency". I am amazed at the distinction given to CCWA. This paragraph also refers to a majority of SWP Contractors in favor of this agreement; we note that the agreement shows only six signers, one of which is the legal counsel for CCWA (who as stated before is not a contractor.)

Please identify this majority and if **all contractors** were given an opportunity to participate. And if not all Contractors agreed or participated, how was the decision made to initiate the DEIR and who is paying for its preparation? Is there a minute order specifying such?

Paragraph two also mentions an initial study. Does this study identify the problems with the SWP? Can the public get it? Its substance should be addressed in the DEIR.

Paragraph 1-1 on page 1-1 is almost pure rhetoric which does little to explain this DEIR. Its reference to: it "may provide an occasion for a more exhaustive consideration..." would lead one to expect "more exhaustive considerations"; in fact the DEIR is

- 10 | exceedingly thin with major deficiencies. The reference to: it "may allow the Lead Agency to consider broad policy alternatives...", is too self-serving. It raises the clear question of how a Lead Agency which is not a SWP Contractor can consider broad policy alternatives in behalf of DWR. DWR should be the initiator of policies, and should set policy for all the SWP Contractors.
- 11 | Page-2 1.3:  
The statement "Any or all of the Contractors may participate in this agreement" seems to set the terms for amending the SWP contract apart from the provisions for amending the contract as stated in the original contract. It also seems to imply logically that if a contractor doesn't agree to the "Agreement" he will still be governed by the existing contract. **But how can you repeal Articles 18(a) and 18(b) for some and not for all?** Since repeal of these Articles is essential to the Agreement, it should logically follow that **the Agreement must have unanimous consent.**
- The DEIR gives no idea how a two track contract is to be enforced. This does not appear to be thought through very well.
- 12 | 1.4:  
The declarations here are self-serving, have no foundation or support by the DEIR and should be deleted.
- 13 | Page 1-5:  
The reference to CCWA opposite Contractor 16 should be deleted.
- 14 | Page 1-6 1.5:  
This states principles that call for the repeal of Article 18(a) and 18(b). As noted above, no one has demonstrated that these provisions can't remedy the SWP problems.
- 15 | Principle 2 needs some numerical examples somewhere in the document to show how allocations are made under the range of possible circumstances.
- 16 | Principle 3 appears to call for action that is in direct contradiction to the constraints in the MOU (exhibit B). There, the MOU says that the DWR can't sell "facilities" built for the Kern Fan Element (KFE). The MOU clearly identifies the Kern County Water Agency (KCWA) as the agency that has the only option to buy the KFE lands. This principle would allow sale to designated Ag. Contractors. Who might these be beside KCWA?
- 17 | Who pays for the retired 45,000 acre feet (AF)?

Principle 4 seems to state that entitlements are permanent rights. Is DWR now allowing severance of entitlement from capacity rights? What is the practical consequence of this?

Principle 5 calls for financing "planned future facilities." If they are planned, they should be listed with cost estimates, financing addressed, and full environmental impact provided in this document. Without this presentation, this principle has no place in this document.

The call for an operating reserve, since it appears that this is in addition to current operations, must be accompanied by an analysis showing the source of the revenues. Do all the Contractors make larger annual payments to provide for this reserve? Where else will DWR get the money?

Principle 8. An alternative that might be more equitable would require that non-project water be transported at the marginal cost of power which we assume is much higher than the melded SWP rate. Present power operations of the SWP produces economic benefits in peak power generation that benefit all Contractors through the melded rate. It seems unfair that this benefit should attach to non-project water which does not share in providing the peak power generation benefit.

Principle 9. The explanation of this principle seems devoid of any rationale. We think it is a mechanism to foster water marketing, but an explanation of its mere technical and abstract features does nothing to advance what its likely impacts will be.

Principle 10. We assume that this refers only to "real" water, not entitlements. However, we are concerned as to what is envisioned by sale to non-contractors. Whom do you have in mind and is it appropriate? And why is it not transacted at the full water rate? Is there some economic analysis justifying a percentage?

Principle 11 is hardly a principle.

**Principle 12: Taken together with the repeal of Article 18(b), -this will be the initiator of the gravest environmental impact.** One of the principle dilemmas with current SWP operations is the creation of "paper water". Many SWP Contractors or recipients within Contractor service areas, are developing growth plans under the assumption that full entitlement deliveries are almost certain.

No definitive guidance has been offered to state what level of delivery can be considered reliable for planning purposes. The DWR is already on record cautioning, but not guiding, participants not

25 | to plan on too much water. This situation can be remedied instantly by invoking Article 18(b).

26 | Without invoking Article 18(b), a statement now to affirm that the SWP will be completed by some unforeseen date by some unforeseen projects just continues the maladies of plans built on "paper water". Good intentions now are counter-productive if the intention can only be realized far in the future.

Invoking Article 18(b) does not foreclose on developing new water supplies in the future. All it does is remove the incentive to develop disastrous development plans, plans that can only bring about future water crises.

Silence in the DEIR on this matter is a serious deficiency.

27 | Principle 13. Again the "Agreement" leaves unstated what the status of Contractors who do not agree will be. The clear implication is that the existing contract will govern for them. We are still not sure that these dual contract provisions can logically be pursued at the same time.

Articles 18(a) and 18(b) prescribe the allocation of all SWP water; how can they operate when some Contractors are governed by an allocation scheme based on another principle? This is absolutely crazy!

Principle 14 seems to be a violation of the provision in the existing contract. How can they agree to abide by a provision that they don't agree too?

28 | Page 3-6, Table 3.6-1:

It is hard to believe the values shown in this table. As I understand the table, it portrays the results of simulations under three scenarios of demand and the capacity of the project under existing conditions.

29 | It is not clear whether the reference to "existing conditions" includes or excludes the most recent agreements on Bay Delta protection. The numbers suggest they did not and if so we must ask why?

30 | My information indicates that the simulations with the new Delta agreements should have been done in time for this DEIR. I am sure they will present quite a different picture.

31 | Apart from this vagueness in the scenarios used in developing the table, its results defy logic. On inspection of the pre-Monterey Agreement values, one must conclude that the only problem with SWP delivery capacity is that we never requested enough water.

Furthermore, we are asked to believe that under the range of demands addressed that the average deliveries range from 2.7 MAF (low demand) to 3.0 MAF (high demand). This from a project that has **never delivered 3.0 MAF in a single year and has delivered far less in drought years.** 31

If under full demand the project will be delivering more water than 3.0 MAF which current beneficiary (or beneficiaries) stand to lose. The implication is that someone or some agency is now receiving water that is technically surplus. This is hard to believe when, to my knowledge, all claimants to Northern California water are saying there is not enough. 32

Page 3-9

The chart on this page bears no resemblance to the figures in Table 3.6-1 which it is purported to portray. 33

Page 3-11

The same comment made with regard to page 3-9 applies here as well. 34

Page 3-18

How did Semi-Tropic WSD get 260 KAF in 1993 when their entitlement is 158 KAF? 35

Page 3-23 3.8.1:

The economics analysis does not treat the impacts due to the creation and maintenance of "paper water". For substantiation I refer you to the draft plans prepared by the City of Santa Maria showing a rapid buildout based on delivery of full SWP entitlement. 36

Page 4-4-4

We are totally at a loss to understand why such detailed analyses of the Lake Perris and Lake Castaic operations are included in this document. The DEIR does not state that project deficiency is being addressed; it only alludes to the notion that it would be nice to allow Contractors more flexibility in SWP facilities. 37

Since I assume that the present operational regimen is founded in some reason, the DEIR should at least state how well the current operational requirement is met under the new proposed regimen. 38

It is not even clear that a SWP principle is involved...i.e. something that in principle could be extended to all SWP facilities without detriment to the project. 39

- 40 | It appears that this principle is some form of conjunctive use. If so, it should be analyzed in that fashion and the objective should be made clear.
- 41 | **"Flexibility in use" is not an objective; at least certainly not for all the Contractors.** It may be nice, but the objective of conjunctive use is to enable a greater reliable yield from a system with multiple independent inputs.
- 42 | Page 4-35, top of page:  
The inference that the increased TDS is due to sea water intrusion should be reflected in significantly higher Na<sup>+</sup> and Cl<sup>-</sup> ions. Are there alternative explanations?
- The paragraph headed "Pathogens":  
The statement..."were .05 (les than) 1 cysts/100 liters" implies that the finished water has more cysts. Please explain.



COMMENTER 23

To: Central Coast Water Authority  
225 Industrial Way  
Buellton, CA

From: Carolee K. Krieger  
808 Romero Cyn. Rd.  
Santa Barbara, CA 93108

7/11/95

COMMENTS ON THE DRAFT EIR  
FOR IMPLEMENTATION OF THE MONTEREY AGREEMENT

SUMMARY: KEY ISSUES

It is timely that proposed changes to the SWP contracts and to the physical structure as proposed in the Monterey Agreement be examined through the EIR process under CEQA. The SWP has been unable to meet demands based on entitlements for some time, and there is no reasonable prospect that it will be able to do so in the future. This ongoing shortage is reason for disputes which led to secret negotiations and to the subject Agreement.

1

The contract changes and the physical projects proposed in the Monterey Agreement involve a number of significant environmental, economic, social and other impacts which deserve and require careful and thorough analysis. Full compliance with CEQA review is not only legally necessary, it is clearly in the interest of good public policy.

The Draft EIR is seriously deficient in addressing key elements of the Monterey Agreement. In particular, it fails to even discuss (let alone meet CEQA requirements for analysis of proposed and alternative options) the most significant aspects of the agreement: 1) the elimination of Article 18(b) of the current contracts (Agreement Principle 2b), and 2) diversion and extraction of 4.2+ MAFY of water, or roughly twice the amount extracted in recent years (Agreement Principle 12).

2

Having initiated a major action and acknowledged the legal requirement for CEQA review, the DWR and the contractors who signed the Agreement should direct that the DEIR be rewritten in accordance with CEQA to include: 1) a complete analysis of the implications of the agreement taken as a whole (as stipulated in the Agreement itself in Principle 13), and 2) a thorough analysis of alternatives including a "no project" alternative in which the terms of existing contracts are complied with in full.

↓

FILED

JUL 18 1995

PLANNING ASSOCIATION 23-1

- 2 | The Monterey Agreement proposes to eliminate a provision in the current contracts (18(b)) which explicitly establishes a mechanism to adjust paper entitlements to reflect actual available water in the event of a permanent shortage relative to entitlement demand. A major reason for the secret negotiations between certain contractors and DWR is the ongoing shortage and the way in which the DWR has been dealing with it. The product of those meetings, the Monterey Agreement, seeks to eliminate the 18(b) contract provision (Principle 2b) and assert that the SWP can and will be completed such that it will deliver over 4.2 MAFY of water. Such major actions in program and in physical facilities, with major and significant environmental, economic, and social impacts, require full CEQA EIR analysis. The present DEIR does not even come close.

The DEIR fails to even mention the current contract provision as an option to be examined. The DEIR fails to consider the significant question of eliminating Article 18(b) in either the "Provisions of the Monterey Agreement" on p.1-6, or in the "Program Description" on pp.2-1, 2-2.

Principle 12 of the Agreement asserts that the SWP should somehow deliver over 4.2 MAFY to meet full entitlement requests. This assertion that the entitlement figures are realistic and viable is the basis for major land-use planning and business planning decisions in all sectors of the economy. The DEIR has a legal requirement to examine the full implications of Principle 12, especially since it is the ultimate basis for commitments made by DWR on behalf of the people of California. The DEIR must examine and explain in detail how 4.2+ MAFY could be extracted and diverted into the system.

- 3 | To do so, it should answer the following questions: Where will the water be diverted? From what hydrologic systems will it be extracted, and how will it be diverted from ecosystems and watersheds that are already over-extracted? With court rulings, congressional actions, state administrative decisions, and other policy actions consistently requiring *decreased* extractions, especially of water flowing into the Bay-Delta, how can such massive amounts of water be extracted? Where will the water be diverted and extracted? How will it be conveyed to the SWP? Will such diversions require a "delta improvement" such as a peripheral canal?

Once those obvious questions are addressed, the following direct impacts must be examined: What will be the environmental impacts of the diversions, extractions, conveyance, additional pumping (including energy demand and capacity questions), ultimate use of the water in both urban and agriculture, and the treatment or handling of wastewater? What will these actions cost, and how will they be paid for? What mitigation options are there? The DEIR does not answer any of these questions.

Instead, the DEIR appears to acknowledge that the proposed action is not feasible, noting that increased water extractions from the delta are "... not presently feasible" (DEIR p.2-17) and that "... construction of new water projects is not a presently feasible alternative to the program." (DEIR p.2-17) Since "completion" of the SWP *is the program*, the DEIR should state clearly that the proposed action is not feasible.

## COMMENTS

**Reason for the "Monterey Agreement": Persistent shortages of water in the SWP and resulting disputes between certain contractors and the DWR over ways to deal with the problem.**

Ongoing SWP water delivery shortages over a period of years prompted the negotiations and Agreement which is the subject of this Draft EIR. (Monterey Agreement, p. 1; and DEIR pp. ES-1, 1-6) The SWP delivers water to contractors who hold "entitlements" to over 4.2 MAFY. In four of the past five years the SWP has been unable to meet entitlement water requested. (DEIR p. 3-1) The stated purpose of the Agreement is to avoid litigation between certain contractors and the DWR regarding the SWP's inability to deliver. It would therefore stand to reason that the DEIR would discuss the SWP limitations and the reliability with which it can provide water in the future, especially in light of legal and physical constraints. Since the Agreement also asserts that the SWP can deliver over 4.2 MAFY in the future, it should obviously analyze how that could be done.

4

The DEIR fails to analyze the capability of the SWP to deliver water and the limitations on the system. A complete analysis of the system capacity in light of environmental, technical, legal, and economic constraints should be included in the study in addition to the full analysis of environmental impacts.

### Purpose of the EIR

According to the DEIR, the task of the document is variously to identify and analyze the potential for "ascertainable" (p. ES-1), "ascertainable and immediate" (p. ES-1), and "current, tangible, and quantifiable" (p. ES-1) environmental impacts and consequences. The document then acknowledges the CEQA requirement for analysis of potential "significant impacts on the environment" (p. 1-1). The comments presented in this review of the DEIR are based on the CEQA requirements.

The DEIR misses the two elements of the Agreement which involve the most significant environmental and economic impacts: Principles 2b and 12. Taken together (note that the Agreement stipulates that all elements must be taken together in an "integrated package" in Principle 13 (Agreement p. 8), these actions constitute a major physical and programmatic action. Both levels of impact require full EIR analysis. The DEIR, however, failed to list these actions in "The five major program components of the Monterey Agreement implementation, that *when put into operation* have the *potential* for current, tangible, and quantifiable environmental impacts." (DEIR p. ES-1)

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As a Program EIR, the document fails to meet its own test as stated on page 1-2: "The Program EIR will be most helpful in dealing with subsequent activities if it deals with the

effects of the program as specifically and comprehensively as possible." By failing entirely to even acknowledge environmental, economic, and other impacts of principles 2b and 12, the DEIR is seriously deficient.

- 6 The document notes that implementation of the Monterey Agreement necessitates a Program EIR based on two criteria. (p. 1-1) Other CEQA requirements, such as Project EIRs for a number of components of the proposed actions under the Monterey Agreement, are not adequately addressed. Some are not addressed at all. While certain elements of the Agreement are program-related and clearly require CEQA review as a "program", others such as the diversion of an additional 2 MAFY of water, are clearly "projects" requiring complete CEQA review. In the present document they are inappropriately lumped under a single Program EIR with repeated reference to future analysis as a reason for the omission. While additional EIR work is undoubtedly in order for certain projects, that does not absolve the current DEIR from complete analysis of obvious elements such as doubling the extractions and diversions of water from the 2 MAFY range to 4.2+ MAFY. Such actions clearly require cumulative impacts analysis as well as specific program element analysis. This analysis is not present in the current DEIR.

#### **Proposed Action: Principle 2b and Principle 12**

- 7 (Comments on these two key principles of the Agreement and actions related to them appear together because they are directly related. The first eliminates the contractual provision which is currently in place to deal with shortages in the system by acknowledging its limitations and aligning the entitlements with the amounts of water that are actually available, the second asserts that the SWP can and will in fact deliver full entitlement volumes of 4.2+ MAFY.)

Under discussion of the three scenarios in the "proposed action" (DEIR p. 2-12 -- 2-15) there is not a single comment regarding the action of elimination of Article 18(b) and the necessity of somehow extracting significant amounts of water (on the order of two times recent extractions) to meet the terms of the agreement.

The contract provision in the existing SWP contracts which deals with conditions of ongoing shortages is Article 18. This is acknowledged and identified in the Agreement and the Draft EIR. The specific section dealing with permanent shortages is Article 18(b). Rather than invoke Article 18(b) in the current contracts, some of the contractors and the DWR have agreed that they would like to eliminate it. (Principle 2b) The environmental consequences of the options; 1) ("no program") complying with the terms of the contract between the State and the contractors and invoking Article 18(b), and 2) eliminating Article 18(b) (Principle 2b of the Agreement, p.2), asserting that the system is not permanently short of water, and seeking to somehow add over 2 MAFY of extractions to supply the SWP (Principle 12, pp. 7-8) must be thoroughly examined in the Draft EIR.

Principle 12 does *not* simply "ratify, clarify, or restate present contract terms" or state law as presented in the DEIR. (DEIR p. 1-8) The contract has explicit language (Article 18b) to deal with the present permanent shortage situation. The Draft EIR must address the content of the existing contract in consideration of Principle 12 and specifically indicate where an additional 2 MAFY will come from. It must also consider the environmental impacts of the alternative, invoking Article 18b. Instead, the DEIR excludes consideration of this key issue.

It would appear from the contract language in Article 18(b), (relating to changes required by the contract in the event of a permanent inability of the SWP to meet entitlements), that the state is *obligated* to bring the system's paper water commitments in line with real "wet" water.

Secret discussions and negotiations have been held between *certain* urban and agricultural interests, and between those interests and the state DWR, regarding this issue. An agreement has been signed and the subject Draft EIR has been prepared pursuant to CEQA requirements to implement changes to the contract including elimination of Article 18(b) of the contract and asserting that the SWP can and will be extended and "completed" such that it could extract and divert more than twice the current volumes of water it is presently capable of taking.

The DEIR should examine the option of "no program" and "project alternatives" in which Article 18(b) is invoked for the following reasons:

- 1) The 18(b) contract provision was included to deal explicitly with the possibility of the present permanent shortage situation.

Article 18(b) is included in the SWP contracts specifically to address the situation, foreseen as a possibility by the contracting parties at the time the contracts were signed and therefore included, that the SWP might not be capable of delivering full entitlement amounts. In the event of a permanent shortage, 18(b) "shall" be invoked. The language is clear; invoking 18(b) is a necessary and required action in the event that the SWP cannot deliver the water.

Both "tests" in paragraph 1 of Article 18(b) seem to be met:

*"In the event that ..."*

*"...the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield"*

*or ...*

(Note: (18(b) stipulates only "or", not "and"):

*"... if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors: ..."*

**2) The SWP cannot deliver 4.2+ MAFY and is in a state of permanent shortage.**

- 8 | The SWP cannot deliver full entitlement amounts, nor can it deliver (at least in 4 of the last 5 years) the amounts requested. (Years: 1990, 1991, 1992, 1994, Monterey Agreement DEIR p. 3-1) In fact, the amounts of water extracted and delivered by the SWP have been *decreased* due to environmental damages caused by the excessive extractions in the past and present. DWR has not provided any evidence that it can deliver more than twice its current volumes in order to meet contracted entitlement amounts.

There is no reasonable prospect of developing sufficient additional "conservation" facilities to meet entitlement figures of over 4.2 MAFY. The opposite is the case, the *existing* facilities cannot be fully utilized at capacity due to damage they and other extractions are causing to the Bay-Delta ecosystem. Thus, there is actually *less* water available for the SWP, even with existing facilities, than there has been historically.

The SWP, and other water systems impacting the Bay-Delta, have been permanently impacted by legislative decisions, court rulings, and administrative actions. All the decisions, rulings, and actions are in favor of restoring water to ecosystems to mitigate damages caused by excessive extraction at so-called "historical" levels. The most reasonable prospect for the future is for even more restrictions on water diversions from the systems which drain to the Bay-Delta, and increased flow requirements through the bay-delta ecosystem.

There have been no "preventative or remedial" measures proposed which could reasonably provide for the extraction of an additional 2+ MAFY required to deliver the full entitlement volumes of water. Thus, a "permanent shortage" based on entitlements versus ability to deliver water exists.

**3) The State DWR has a responsibility to invoke Article 18(b) of the contracts.**

- 9 | DWR has a *responsibility* to invoke Article 18(b) under current conditions and to reconcile paper entitlement water with the wet variety. Actual, reliable delivery capacity in the vicinity of 2.0 MAFY is available to meet 4.23 MAFY (Monterey Agreement EIR figure, p.3-2) of entitlement. Thus, the entitlements are worth something less than half of their face value in real "wet" water. DWR should therefore correct the entitlement figures to reflect its real capabilities or demonstrate now how it will divert and deliver an additional 2+ MAFY.

The DEIR should analyze the following options:

- Article 18(b) of the contracts is invoked and all entitlements are adjusted to reflect actual, reliable water supplies deliverable under the contracts. (The new entitlement figures must incorporate reduced extractions resulting from recent legislative, administrative, and legal decisions. In that they may be further reduced in the future by the same processes, the new entitlement figures should be determined with careful attention to environmental constraints.) 9
- Provide specific plans, including cost, environmental impacts, method of payment, and specific timeline, for completion of the SWP such that it can extract and deliver the full contract volumes. In that this total entitlement figure is more than twice the amounts of water the SWP is currently delivering, and recent decisions and actions have reduced rather than increased extractions, DWR should also be directed to show the political, legal, and financial viability of its plans. 10

In addressing the impacts of Principles 2b and 12, the DEIR should include consideration of the following: 11

1. The SWP was unable to meet entitlement requests in 1994 (made in 1993). Instead, DWR "adjusted" the requests. There is no reasonable prospect of DWR being able to meet entitlement figures. Additional facilities being built (coastal branch) will increase *demand*, while supplies are actually decreasing. The Monterey Agreement Draft EIR also clarifies that additional volumes of water for the SWP are not planned in the near or even mid-term. Additional water is simply assumed to exist to meet the routine assertion that the SWP should be "finished" in the future.
2. There is no reasonable basis for water planning or public policy that would support the assertion that 4.2+ MAFY (the ultimate entitlement figure) will ever be developed.
3. The amount of water extracted from the systems flowing to the Bay-Delta will almost certainly be reduced in both wet and dry years due to past and continuing environmental damage. Other supply sources outside of the Bay-Delta system are also being reduced due to environmental damage, contractual obligations, and other reasons. (For example: Mono system diversions, Colorado River supplies, contaminated ground water in various parts of the state, etc.)
4. Thus, a permanent shortage relative to *existing and future entitlements* to the SWP exists, and there is no reasonable prospect of adding the necessary volumes of water to the system to meet the demand.

- 12 | 5. Environmental damage is resulting from the failure of the state to reconcile demand for water based on entitlements with actual water supplies available.
- 13 | 6. Proper planning at the local government level is impaired by inaccurate and unrealistic expectations placed upon the SWP to deliver water. (New demand is added through land-use decisions with expectations of deliveries of entitlement volumes of SWP water that is not really available.)
- 14 | 7. Significant economic impacts to agriculture are resulting from the disparity between "paper water" and actual supplies available. Farmers need to have greater certainty regarding the real supplies available. Adjusting entitlements to reflect real water would help. Transfers of water must also be based on figures reflecting real "wet" water, not paper water at a discount to face value of over 50%.
8. Business in the state is negatively impacted by the uncertainty caused by the SWP's unrealistic claims to deliver entitlement volumes of water to contractors in the future. Adjusting entitlements to reflect real water would help.
9. The integrity of bonds and debt financing in the state, both at the state level and for individual districts and communities, may be seriously and adversely impacted by the current failure of the SWP to reconcile paper water entitlements with real water supplies available.
- 15 | 10. Reconciling real water with paper entitlements is necessary for the development of rational water and land-use policy and business decisions. Planning by local government and the private sector must be based on an accurate representation of the SWP's ability to deliver water for which it has contracted entitlements.
- 16 | 11. DWR's "adjusted request" process for 1993-1994 clearly revealed the inability of the system to provide for entitlement requests. Without reconciling the entitlements with real water supplies available to the system, water contractors are unable to plan for DWR "adjustments" to their needs.
12. Harm can be diminished by aligning the contractual obligations of the state with the ability of the system to deliver water. Local planning decisions relating to SWP ability to deliver, and to the actual cost of deliveries on a per-acre-foot basis, would be improved. (If the volumes of water are half or less of entitlement figures, then the capital cost of supply systems like the coastal extension are of course double or more when stated as a per-acre-foot amount.
13. Potential liability of the state for failure to acknowledge the actual capabilities of the SWP may be avoided or reduced.



### **"No Project Alternative" and "Program Alternatives" (Sections 2.3 and 2.4)**

No discussion appears in either the "proposed action" section or in the "no project alternative" or "program alternatives" of the option of *compliance* with current contract terms. (DEIR pp. 2-12 -- 2-17) The DEIR fails to analyze, or even mention, the possibility of invoking Article 18(b), aligning the paper water entitlements with actual, reliable supplies water. This alternative needs to be fully examined. In particular, adjusting the entitlements to reflect actual, reliable supplies must be explicitly listed and analyzed as an option.

16

The "Program Alternatives" comment (DEIR pp. 2-15, 2-16) the DEIR lists four "major objectives" of the Monterey Agreement. The objectives listed do not reflect the language in the actual agreement. The objective of the Agreement, in its own language, it to avoid litigation and to settle disputes. (Agreement p.1) It would appear that the objectives were created in the DEIR.

The DEIR also fails to test the "objectives" in the various alternatives. For example, would the system be *more* reliable with a realistic reflection of water available for delivery in the entitlements with Article 18(b) invoked? Would rates be *more* stable with adjusted entitlements? Would the rates and the reliability factors actually be less stable with an even 50/50 split in reductions as proposed in the Agreement? Is "reliability" and rate "stability" actually enhanced by a simple assertion (and absolutely no analysis) that the SWP will be completed? All of these questions merit detailed analysis in the DEIR.

### **Statewide Assessment**

This section (DEIR p. 3-1) claims to describe the "potential environmental consequences associated with implementation of program alternatives..." at the state and regional levels.

The DEIR acknowledges that the SWP has failed to deliver water to its contractors "in the amounts requested" in four of the last five years, and it further notes that the project yield is *decreasing*. (DEIR p. 3-1) No connection is made between these key points and the unsubstantiated assertion that the SWP can somehow deliver something on the order of twice as much water.

Amazingly, the DEIR then claims "No significant environmental impacts on the Sacramento-San Joaquin Delta or other SWP water sources are anticipated as a result of implementation of the Monterey Agreement." (DEIR p. 3-2) The DEIR goes on to discount impacts to groundwater, water quality, air quality, biological resources, and land use without any analysis of the implications of full implementation of the terms of the Agreement.

17

- 18 | The DEIR is seriously inadequate without a full analysis of the statewide impacts resulting from implementation of this Agreement as an "integrated package" per principle 13 of the Agreement. Either the Agreement is analyzed in full, as such a package, with the obvious problems of Principles 2b and 12 included, or the DEIR should be considered far short of CEQA compliance.

The "statewide assessment" section concludes with the astonishing notion that "In the absence of significant adverse impacts in both economics and population, mitigation measures are not called for." (p. 3-26) The cost of "completion" of the SWP such that it could extract and deliver 4.2+ MAFY would arguably be significant. The DEIR should take another look at this issue.

### Cumulative Impacts

- 19 | The DEIR concludes with a statement that the Monterey Agreement is "speculative" in nature and thus that the cumulative impacts are speculative. It then draws the further conclusion that this somehow absolves the DEIR of properly analyzing the environmental and other impacts as required under CEQA, and it limits the analysis to certain portions of the Agreement, notable excluding Principles 2b and 12. (DEIR p. 6-1) No comment appears regarding the two items.

Again, the DEIR is seriously deficient in studying the cumulative impacts. It fails to even list them, let alone deal properly with EIR requirements.

### Principle 1:

- 20 | This action has potentially major impact on urban contractors. What would have been the deliveries to the urban contractors if agriculture had not taken the cuts first in the years of the last drought? What would this have meant for delivery amounts? Reliability to the urban contractors is *clearly reduced* under the proposed action, even with the prospect of buying the water back from agricultural sellers.
- 21 | Reliability of supply is directly connected to land-use decisions. With the present capabilities of the SWP, it would appear that urban contractors can count on *reliable* deliveries in the range of 1/3 to 1/2 of "face value" of the contract entitlements. This reliable percentage number should be the basis for land-use decisions. This is not presently the case. The DEIR must address this issue.

The Draft EIR should clearly identify reliable service levels under drought conditions at least as serious as the recent historical levels under the proposed system and under the current system, and those amounts of water should be the basis of water supply planning and land-use decisions.

### Additional Comments and Questions on the Draft EIR

1. What is the basis for the 45,000 AF figure in Principle 3, and what is the mechanism and legal process for "retiring" entitlements? (DEIR p. 1-6) Why not "retire" additional entitlements? | 22
2. What is the specific basis for determining volumes of water to be classified as "interruptible" and made available at the cost of pumping? Principle 7 states in part: water "not needed for fulfilling entitlement delivery requests or meeting the project operational commitments, including storage goals for the current or following years ..." Does this imply that there will be no interruptible supplies available until all storage systems are full? If so, which storage systems are included and what criteria will be employed to make that determination? (Agreement p.5) | 23
3. What are the sources of non-project water that are envisioned? (Agreement p.5) | 24
4. How can some of the contracts be changed in accordance with this agreement and not others? Is this agreement to be forced on all contractors? The DEIR states that "any and all Contractors may participate in the rights and obligations of any contract amendments approved consistent with the Monterey Agreement." (DEIR p. 1-2) How could the provisions of Article 18(b) be invoked for some and not all parties? | 25
5. Have public hearings in the various areas of the state impacted by this program/project been scheduled? If not, why not? | 26
6. Is the financial integrity of the SWP in question? (Principle 5) | 27
7. Will agricultural contractors purchase water under the new Agreement terms at a lower rate than they sell it to urban contractors under the transfer provisions? If so, what is the rationale for agriculture enjoying a profit on the water purchased and resold to urban contractors when the urban contractors presently have the right to purchase the water with priority over agriculture? | 28
8. The "program alternative" listed under 2.4.1 (DEIR p. 2-16) addresses litigation as an alternative. It should be noted that there is no information provided that litigation would be precluded in any way under the new agreement. Nor is there any argument or information suggesting that litigation would be *less desirable* than the proposed agreement. Clearly those who negotiated in secret came to an agreement they feel is better than litigation. It is not at all clear that the people of California would not be better off with the issues and options handled in the courts. | 29
9. Water use in California is by law supposed to be based on criteria of reasonable and beneficial use. Recent court and administrative rulings have affirmed this basis for water rights. The Monterey Agreement and the DEIR fails to adequately deal with | 30

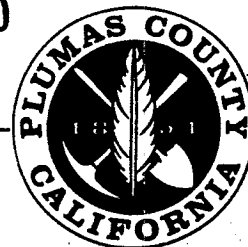
- 30 | this criteria. For example, no analysis is provided of the implementation of so-called "best management practices" (BMPs) in either the urban or agricultural sectors. The BMP concept was developed to establish a basis for reasonable and beneficial use. The SWP contracts should explicitly require *implementation* of BMPs in the urban sector (where they have been developed and implemented by some contractors) and in the agricultural sector (where they have not even been developed).

cc: David Kennedy (DWR)  
Steve Macaulay (SWC)

:moocir

## DEPARTMENT OF PUBLIC WORKS

1834 EAST MAIN, QUINCY, CA 95971 TELEPHONE (916) 283-6268 FAX 283-6323

TOM HUNTER  
DIRECTORRICHARD HUMPHREY  
DEPUTY DIRECTOR OF PUBLIC WORKSMARTIN BYRNE  
ASST. DIRECTOR OF PUBLIC WORKS

July 11, 1995

Central Coast Water Authority  
255 Industrial Way  
Buelton, CA 93427-9565

Re: Monterey Agreement EIR

Attn. Dan Masnada, Executive Director

Dear Dan,

On behalf of the Plumas County Flood Control and Water Conservation District, I wrote you a letter dated June 20, 1995 requesting an extension to the comment period for the Monterey Agreement EIR. My records show that you received my request on June 23, 1995. To date I have not received a response to my request.

I have received two copies of the Monterey Agreement Draft Environmental Impact Report. At this time I would like to provide some of our concerns regarding the terms of the proposal:

1. Principle 12 of the Monterey Agreement is proposing that the State Dept. of Water Resources develop enough water to satisfy the contracted water amounts to the Contractors. Presently DWR is providing around 2.1 million acre feet per year to the contractors. The total contracted amount is in the neighborhood of 4.23 MAF/Y. Page 2-17 calls for the development of more water projects. Where do the proponents of the Monterey Agreement propose to develop the 2.13 MAF/Y difference? Are any of the projects within the Feather River Watershed?
2. If the proposed changes to the State Water Project do not include new storage facilities, where will the new water come from? Does the plan consider the lowering of lakes in the Sierras or the further lowering of the lake level within the existing facilities?
3. Plumas County is very concerned with its area of origin status within Article 18 of the existing contract. Principle 12 calls for the deletion of Article 18b through subparagraph (1). There are certain rights within subparagraph (1) that we want to know exactly how we will be affected.

I believe that there is a permanent shortage presently, as the State cannot provide the contracted water as mentioned in Item 1 above. I would request that the EIR describe fully and show the environmental effect of how the removal of a portion of Article 18b

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will affect the areas of origin.


- 2 | 4. Principle 13 proposes that water contractors can either be totally within the terms of the Monterey Agreement or totally within the terms of the existing State Water Contract. Explain how DWR will administrate a program that has two distinct contracts please.

Article 37 of the existing State Contract provides that amendments to the contract shall be by mutual agreement of the parties. Does this mean that all or any of the changes to the existing contract must be approved by all of the State Water Contractors to become effective?

I trust that you can see that the Plumas County Flood Control and Water Conservation District is concerned with the possible effects of the proposed Monterey Agreement. I would appreciate a written response to these simple questions by August 18, 1995. If this response is not possible, please contact me to let me know when I will be receiving a response.

I am sure that a longer review period would have generated a more detailed and thorough response.

Sincerely,



Tom Hunter  
Director of Public Works

Concurred With,



Frances Roudebush  
Chair, Plumas County Board of Supervisors

cc: Board of Supervisors  
Jim Stretch, CAO  
Rob Shulman, County Counsel  
Assemblyman Bernie Richter  
Senator Tim Leslie  
Doug Wheeler, DWR



CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.

Central Coast Water Authority  
225 Industrial Way  
Buellton, CA 93427-9565

7/14/95

Dear Sirs:

I would like to submit the following comments on the Draft EIR of the Monterey Agreement.

The Central Coast Water Authority (CCWA) is not the appropriate agency to be the Lead Agency in this matter for the following reasons:

1. The CCWA is not a "Contractor". The Santa Barbara County Flood Control and Water Conservation District (SBCFCWCD) is the "Contractor" with the Department of Water Resources (DWR). The Transfer of Financial Responsibility Agreement, signed in 1991 by DWR, SBCFCWCD, and CCWA clearly shows the contractor is SBCFCWCD and that SBCFCWCD has senior claims on water revenue to pay DWR capital costs over the junior CCWA Revenue Bonds.

2. To have any one Contractor be Lead Agency in forming such a significant document that dramatically affects all 29 Contractors is inappropriate. The appropriate Lead Agency is DWR, the overarching body for all 29 Contractors.

3. Only six Contractors signed the Monterey Agreement (appendix A); none of these are from Northern California. How do the Northern California SWP Contractors feel about this?

**EXECUTIVE SUMMARY**

The five major program components (p ES-1 & ES-2) discussed in the executive summary could all be satisfied and met within the existing contracts by simply implementing Article 18(b) of the existing contract.

Article 18(b) states: "In the event that the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield, or if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventive or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors:

(1) The annual entitlements and the maximum annual entitlements of all contractors, except to the extent such entitlements may reflect established rights under the area of origin status, shall, by amendment of Table A of this contract, be reduced proportionately by the State to the extent necessary so that the sum of the revised maximum annual entitlements of all contractors will then equal such reduced minimum project yield: *provided*, That appropriate adjustment in the contractors' respective financial obligations to the State under the Transportation Charge shall be made in accordance with such reduced entitlements if such reductions have not been strictly proportionated throughout. //

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## THE FIVE MAJOR PROGRAM COMPONENTS:

### 3 1. Revisions to the methodology used to allocate water among Contractors.

Clearly implementation of Article 18(b) would reallocate water based on the existing "minimum project yield". DWR has stated in past Bulletin 132s' that the "firm yield" of the SWP is 2.4 MAF. The current Delta Standards must be figured in to get a reliable number to make up this "minimum project yield". This would be a benefit to everyone.

Cities and Counties could plan development based on a reliable water supply. Agriculture (Ag.) would be able to plan and get financing for crops based on "wet" water not "paper" promises (ie contractual obligations).

### 2. Retirement of 45,000 AF of Ag. entitlement.

Article 18(b) would do this and go further and retire all entitlement that doesn't exist.

### 3. Transfer by sale, between willing sellers and willing buyers, of 130,000 AF of entitlement from Agricultural Contractors to Urban Contractors.

Implementation of Article 18(b) would eliminate the need for this program component as all current entitlement would be reduced by 50% or more to reflect the true availability of water for the SWP. It is ludicrous at best to rely on water that doesn't exist.

Previous policy on permanent sale or transfer of entitlement is not clear. It would be a great benefit for DWR to formulate a clear policy on permanent sale or transfer of entitlement.

### 4 4. Changes in control of the Kern Fan Element of the Kern Water Bank.

Implementation of Article 18(b) would make this unnecessary as DWR would want to keep the Kern Fan Element to further enhance the "minimum project yield" of the SWP for all 29 of the SWP Contractors. As this program component is written, it seems to benefit only one SWP Contractor; The Kern County Water Agency.

As the Delta Standards take effect and to further protect the San Francisco-San Joaquin Bay Delta as a valuable State resource, it is imperative for DWR to maintain its current storage facilities for the benefit of all SWP Contractors.

### 5 5. Changes in the manner in which Castaic Lake and Lake Perris Terminal reservoirs may be operated.

Implementation of Article 18(b) would make this unnecessary for the same reasons as 4.

It is curious here to note that program component 4 clearly primarily benefits the Kern County Water Agency (KCWA) and that program component 5 primarily ("99.9%") benefits the Metropolitan Water District of Southern California (MET).

It appears that this entire "Monterey Agreement" has been drawn up to benefit two Contractors; especially at the expense of Northern California SWP Contractors, the "area of origin" water rights holders, if Article 18(b) were eliminated.



The executive summary is glaringly deficient on a major point; it fails to discuss Principle 12. 6

**PRINCIPLE 12** states: "Project Improvements. DWR reaffirms its obligation under Article 6(c) of the water supply contracts, subject to available funds, to make all reasonable efforts consistent with sound fiscal policies and proper operating procedures to complete the project facilities and other water management programs necessary for delivery of project water to the Contractors in the total amounts designated in each contract's Table A."

This clearly would have a significant economic and environmental impact on the whole state. As such, Principle 12 should be deleted or all of its implications need to be subject to ~~thorough~~ *thorough* economic and environmental review.

#### Table ES-1

The statewide impacts for all resource areas: geology and soils, water resources, air quality, biological resources, cultural resources, land use, recreation, socioeconomic, and health and safety would be very significantly impacted by implementation of Principle 12, completion of the SWP. This table needs to reflect that.

### THE INTRODUCTION

#### 1.1 PURPOSE OF A PROGRAM EIR

This section discusses the qualities of a "Program EIR" as being "an occasion for a more exhaustive consideration of effects and alternatives" and to "ensure considerations of cumulative actions."

This can not possibly be taken seriously without first seeking remedies in the existing contract (ie. implementation of Article 18(b) and secondly, looking at all the consequences, both economic and environmental, to implementation of Principle 12 *proposed* completing the SWP to deliver full Table A contractual commitments. 7

1.1 proposes that the "Lead Agency" (ie. CCWA) would be "allowed to consider broad policy alternatives and program-wide mitigation measures..." 8

Neither CCWA, which is not a Contractor, nor any one Contractor can do this fairly for all the other Contractors. The "lead Agency" must be the DWR, the overarching entity for all the Contractors.

Further 1.1 purports, "The Program EIR can be used with later activities. The Program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the program described in the Program EIR AND NO FURTHER ENVIRONMENTAL DOCUMENTATION WOULD BE REQUIRED." (emphasis added) 9

This raises two serious concerns:

- 1) Without looking to the existing contracts for remedies (ie. implementation of Article 18(b)), and with the clear expectation that the SWP will be built to deliver full Table A

9 | entitlements, this Program EIR could preclude the need the any future EIR's without looking at any of the very significant consequences of these actions. this makes a mockery of CEQA and environmental review.

10 | 2) This Program EIR is neither specific nor comprehensive in dealing with the very broad issues raised here, particularly those raised by its proposed Article 12, facility buildout. This EIR also is wholly silent on potentially accomplishing its stated goals through implementation of provisions in existing Contract Article 18(b).

11 | The only specific, comprehensive analysis contained in this EIR involves looking at ways Kern County Water Agency (through Kern Fan Element) and the Metropolitan Water District (through Lake Perris and Castaic Lake) can, in essence, take existing SWP facilities and use them for their own conjunctive storage facilities, at the expense of all other 27 SWP Contractors.

### 1.3 PARTICIPANTS IN THE SWP

This section states, "Any or all of the Contractors may participate in the rights and obligations of any contract amendments approved consistent with the Monterey Agreement." This language raises multiple legal and environmental issues which this Program EIR nowhere addresses. I mention a few of the most glaring below.

12 | What will happen if some of the Contractors do not agree to sign the Monterey Agreement while others do? Which contract will then prevail in apportioning entitlement? Will existing Article 18(b) apply to some, but not other Contractors?

13 | And what happens to "area of origin" water rights which presently have absolute seniority in the existing Contracts? Will the original Contracts be "senior" because they are "first in time"? This Program EIR as proposed would appear to attempt to whisk these "area of origin" rights under the rug, if not indeed to render them impotent.

14 | Figure 1.3-1

The Central Coast Water Authority should be deleted. It is NOT a Contractor.

### 1.4 PURPOSE AND NEED

This section of the proposed EIR discusses shortfalls and possible litigation to resolve differences. The remedy to this problem already exists in the current governing Contracts and is basic. Implement existing Article 18(c) and start dealing with "wet" water. This would not preclude DWR from developing sources of new water in future.

## 1.5 PROVISIONS OF THE MONTEREY AGREEMENT

Principal 14 states: "If the parties do not enter into the Amendments (to existing Contracts), they agree not to utilize the Statement of Principals document (this Program EIR) in any court proceedings relating to matters addressed in this document."

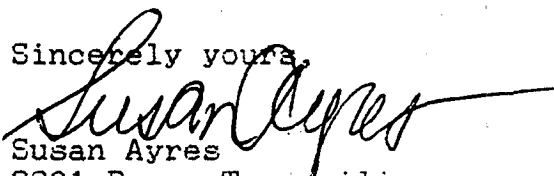
It would appear to the writer that this Principal 14 is not legally defensible. Principal 14 language appears to state that a non-signatory to an agreement can be bound by the agreement that it refuses to sign in that the entity cannot so much as mention the agreement in a lawsuit to defend its rights. This "Principal 14" would thus appear to be a de facto attempt to bind a non-signatory to the agreement it refused to sign. That appears to fly in the face of all Western law as it pertains to written agreements of any nature. 15

This apparent de facto attempt to bind any one of the 29 SWP Contractors to an agreement it chose not to sign would also appear to have significant environmental impacts. This Program EIR is again wholly silent on any or all of these impacts.

In summary, it is asked that the Final Program EIR correct all the deficiencies noted above, especially those relating to proposed Principal 12 (facility buildout) and proposed Principal 14 (de facto agreement not to be bound, though not a signatory).


We ask these deficiencies be corrected in fairness to all 29 SWP Contractors and the ratepayers they represent. In the interest of sound resource management and good planning, we also ask that the Final Program EIR include a thorough analysis of the implementation of existing Contract Article 18(b). In this way an analysis can be done based on reliable "wet" water. Thank you for this opportunity to comment.

Sincerely yours,

  
Susan Ayres  
2901 Paseo Tranquillo  
Santa Barbara, CA 93105

cc: David Kennedy, DWR  
Steve Macaulay, SWC

EIRMontr



## California Sportfishing Protection Alliance

July 18, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

**Re: Monterey Agreement DEIR**

Dear Mr. Masnada:

The California Sportfishing Protection Alliance (CSPA) adopts the comments of Robert C. Wilkinson (attached). These comments are consistent with the analysis made by our membership of the effects of the Monterey Agreement programmatic EIR.

- 1 | CSPA did not receive notice of **this project**. How was it possible that CSPA was omitted from this notification?

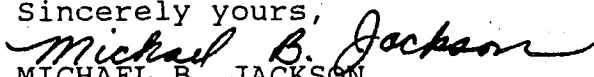
CSPA has attended water rights/quality hearings in the Delta for ten years. We are on every mailing list regarding water rights/quality Delta issues at the State Water Resources Control Board. CCWA knows of our interest in State Board jurisdiction and notice requirements. So do SWP contractors.

Robert J. Baiocchi, CSPA consultant and former CSPA Executive Director, has been an "interested party" on notification lists for all rivers in California for the past 15 years. Why was he omitted from receiving the Monterey Agreement DEIR? CSPA is involved in issues concerning many rivers and issues such as Sacramento (Glenn Colusa), Feather (DWR-SWP contractors), Yuba (complaint heard and submitted), American, Mokelumne (Penn Mine--complaint heard/submitted), Tuolumne (settlement agreement), Calaveras, Merced, and San Joaquin.

We have participated in numerous SWRCB water rights hearings. SWP is junior to upstream users. We need to determine now who pays for the flows needed and for watershed maintenance and restoration.

We would appreciate a response as to why we were not notified of the "Implementation of the Monterey Agreement DEIR".

Sincerely yours,

  
MICHAEL B. JACKSON  
Counsel for CSPA  
jd

P.O. Box 207  
2288 E. Main St, Ste G  
Quincy, CA 95971  
Tel 916-283-1007

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C.C.W.A.

**COMMENTS ON THE DRAFT EIR  
FOR IMPLEMENTATION OF THE MONTEREY AGREEMENT**

Reason for the "Monterey Agreement": Persistent shortages of water in the SWP and resulting disputes between certain contractors and the DWR over ways to deal with the problem. 2

Ongoing SWP water delivery shortages over a period of years prompted the negotiations and Agreement which is the subject of this Draft EIR. (Monterey Agreement, p.1; and DEIR pp. ES-I, 1-6) The SWP delivers water to contractors who hold "entitlements" to over 4.2 MAFY. In four of the past five years, the SWP has been unable to meet entitlement water requested. (DEIR p.3-1) The stated purpose of the Agreement is to avoid litigation between certain contractors and the DWR regarding the SWP's inability to deliver. It would therefore stand to reason that the DEIR would discuss the SWP limitations and the reliability with which it can provide water in the future, especially in light of legal and physical constraints. Since the Agreement also asserts that the SWP can deliver over 4.2 MAFY in the future, it should obviously analyze how that could be done. 3

The DEIR fails to analyze the capability of the SWP to deliver water and the limitations on the system. A complete analysis of the system capacity in light of environmental, technical, legal, and economic constraints should be included in the study in addition to the full analysis of environmental impacts. 4

**Purpose of the EIR**

According to the DEIR, the task of the document is variously to identify and analyze the potential for "ascertainable" (p. ES-1), "ascertainable and immediate" (p. ES-1), and "current, tangible, and quantifiable" (p. ES-1) environmental impacts and consequences. The document then acknowledges the CEQA requirement for analysis of potential "significant impacts on the environment" (p. 1-1). The comments presented in this review of the DEIR are based on the CEQA requirements.

The DEIR misses the two elements of the Agreement which involve the most significant environmental and economic impacts: Principles 2b and 12. Taken together (note that the Agreement stipulates that all elements must be taken together in an "integrated package" in Principle 13 (Agreement p. 8), these actions constitute a major physical and programmatic action. Both levels of impact require full EIR analysis. The DEIR, however, failed to list these actions in "The five major program components of the Monterey Agreement implementation, that when put into operation have the potential for current, tangible, and quantifiable environmental impacts." (DEIR p. ES-1) 5

As a Program EIR, the document fails to meet its own test as

5 | stated on page 1-2: "The Program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible." By failing entirely to even acknowledge environmental, economic, and other impacts of principles 2b and 12, the DEIR is seriously deficient.

6 | The document notes that implementation of the Monterey Agreement necessitates a Program EIR based on two criteria. (p. 1-1) Other CEQA requirements, such as Project EIR's for a number of components of the proposed actions under the Monterey Agreement, are not adequately addressed. Some are not addressed at all. While certain elements of the Agreement are program-related and clearly require CEQA review as a "program", others such as the diversion of an additional 2 MAFY of water, are clearly "projects" requiring complete CEQA review. In the present document they are inappropriately lumped under a single Program EIR with repeated reference to future analysis as a reason for the omission. While additional EIR work is undoubtedly in order for certain projects that does not absolve the current DEIR from complete analysis of obvious elements such as doubling the extractions and diversions of water from the 2 MAFY range to 4.2+MAFY. Such actions clearly require cumulative impacts analysis as well as specific program element analysis. This analysis is not present in the current DEIR.

7 | **Proposed Action: Principle 2b and Principle 12**

(Comments on these two key principles of the Agreement and actions related to them appear together because they are directly related. The first eliminates the contractual provision which is currently in place to deal with shortages in the system by acknowledging its limitations and aligning the entitlements with the amounts of water that are actually available, the second asserts that the SWP can and will in fact deliver full entitlement volumes of 4.2+MAFY.)

Under discussion of the three scenarios in the "proposed action" (DEIR p.2-12--2-15) there is not a single comment regarding the action of elimination of Article 18(b) and the necessity of somehow extracting significant amounts of water (on the order of two times recent extractions) to meet the terms of the agreement.

The contract provision in the existing SWP contracts which deals with conditions of ongoing shortages is Article 18. This is acknowledged and identified in the Agreement and the Draft EIR. The specific section dealing with permanent shortages is Article 18(b). Rather than invoke Article 18(b) in the current contracts, some of the contractors and the DWR have agreed that they would like to eliminate it. (Principle 2b) The environmental consequences of the options: 1) ("no program") complying with the terms of the contract between the State and the contractors and

involving Article 18(b), and 2) eliminating Article 18(b) 7  
(Principle 2b of the Agreement, p.2), asserting that the system is not permanently short of water, and seeking to somehow add over 2 MAFY of extractions to supply the SWP (Principle 12, pp. 7-8) must be thoroughly examined in the Draft EIR.

Principle 12 does not simply "ratify, clarify, or restate present contract terms" or state law as presented in the DEIR. (DEIR p. 1-8) The contract has explicit language (Article 18b) to deal with the present permanent shortage situation. The Draft EIR must address the content of the existing contract in consideration of Principle 12 and specifically indicate where an additional 2 MAFY will come from. It must also consider the environmental impacts of the alternative, invoking Article 18b. Instead, the DEIR excludes consideration of this key issue.

It would appear from the contract language in Article 18(b), (relating to changes required by the contract in the event of a permanent inability of the SWP to meet entitlements), that the state is obligated to bring the system's paper water commitments in line with real "wet" water.

Secret discussions and negotiations have been held between certain urban and agricultural interests, and between those interests and the state DWR regarding this issue. An agreement has been signed and the subject Draft EIR has been prepared pursuant to CEQA requirements to implement changes to the contract including elimination of Article 18(b) of the contract and asserting that the SWP can and will be extended and "completed" such that it could extract and divert more than twice the current volumes of water it is presently capable of taking.

The DEIR should examine the option of "no program" and "project alternatives" in which Article 18(b) is invoked for the following reasons:

1. The 18(b) contract provision was included to deal explicitly with the possibility of the present permanent shortage situation.

Article 18(b) is included in the SWP contracts specifically to address the situation, foreseen as a possibility by the contracting parties at the time the contracts were signed and therefore included, that the SWP might not be capable of delivering full entitlement amounts. In the event of a permanent shortage, 18(b) "shall" be invoked. The language is clear, invoking 18(b) is a necessary and required action in the event that the SWP cannot deliver the water.

Both "tests" in paragraph 1 of Article 18(b) seem to be met:

"In the event that..."

"...the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield"

or...

(Note: (18(b) stipulates only "or", not "and")):

"...if for any reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractor:..."

- 8 2) The SWP cannot deliver 4.2+MAFY and is in a state of permanent shortage.

The SWP cannot deliver full entitlement amounts, nor can it deliver (at least in 4 of the last 5 years) the amounts requested. (Years: 1990, 1991, 1992, 1994, Monterey Agreement DEIR p. 3-1) In fact, the amounts of water extracted and delivered by the SWP have been decreased due to environmental damages caused by the excessive extractions in the past and present. DWR has not provided any evidence that it can deliver more than twice its current volumes in order to meet contracted entitlement amounts.

There is no reasonable prospect of developing sufficient additional "conservation" facilities to meet entitlement figures of over 4.2 MAFY. The opposite is the case, the existing facilities cannot be fully utilized at capacity due to damage they and other extractions are causing to the Bay-Delta ecosystem. Thus, there is actually less water available for the SWP, even with existing facilities, than there has been historically.

The SWP, and other water systems impacting the Bay-Delta, have been permanently impacted by legislative decisions, court rulings, and administrative actions. All the decisions, rulings, and actions are in favor of restoring water to ecosystems to mitigate damages caused by excessive extraction at so-called "historical" levels. The most reasonable prospect for the future is for even more restrictions on water diversions from the systems which drain to the Bay-Delta, and increased flow requirements through the bay-delta ecosystem.

There have been no "preventative or remedial" measures proposed which could reasonably provide for the extraction of an additional 2+MAFY required to deliver the full entitlement volumes of water. Thus, a "permanent shortage" based on entitlements versus ability to deliver water exists.



- 3) The State DWR has a responsibility to invoke Article 18(b) of the contracts.

DWR has a responsibility to invoke Article 18(b) under current conditions and to reconcile paper entitlement water with the wet variety. Actual, reliable delivery capacity in the vicinity of 2.0 MAFY is available to meet 4.23 MAFY (Monterey Agreement EIR figure, p.3-2) of entitlement. Thus, the entitlements are worth something less than half of their face value in real "wet" water. DWR should therefore correct the entitlement figures to reflect its real capabilities or demonstrate now how it will divert and deliver an additional 2+ MAFY. 9

The DEIR should analyze the following options:

- o Article 18(b) of the contracts is invoked and all entitlements are adjusted to reflect actual, reliable water supplies deliverable under the contracts. (The new entitlement figures must incorporate reduced extractions resulting from recent legislative, administrative, and legal decisions. In that they may be further reduced in the future by the same processes, the new entitlement figures should be determined with careful attention to environmental constraints.) 10
- o Provide specific plans, including cost, environmental impacts, method of payment, and specific timeline, for completion of the SWP such that it can extract and deliver the full contract volumes. In that this total entitlement figure is more than twice the amounts of water the SWP is currently delivering, and recent decisions and actions have reduced rather than increased extractions, DWR should also be directed to show the political, legal, and financial viability of its plans. 11

In addressing the impacts of Principles 2b and 12, the DEIR should include consideration of the following: 12

1. The SWP was unable to meet entitlement requests in 1994 (made in 1993). Instead, DWR "adjusted" the requests. There is no reasonable prospect of DWR being able to meet entitlement figures. Additional facilities being built (coastal branch) will increase demand, while supplies are actually decreasing. The Monterey Agreement Draft EIR also clarifies that additional volumes of water for the SWP are not planned in the near or even mid-term. Additional water is simply assumed to exist to meet the

- 12 routine assertion that the SWP should be "finished" in the future.
2. There is no reasonable basis for water planning or public policy that would support the assertion that 4.2+ MAFY (the ultimate entitlement figure) will ever be developed.
3. The amount of water extracted from the systems flowing to the Bay-delta will almost certainly be reduced in both wet and dry years due to past and continuing environmental damage. Other supply sources outside of the Bay-Delta system are also being reduced due to environmental damage, contractual obligations, and other reasons. (For example: Mono system diversions, Colorado River supplies, contaminated ground water in various parts of the state, etc.)
4. Thus, a permanent shortage relative to existing and future entitlements to the SWP exists, and there is no reasonable prospect of adding the necessary volumes of water to the system to meet the demand.
- 13 5. Environmental damage is resulting from the failure of the state to reconcile demand for water based on entitlements with actual water supplies available.
- 14 6. Proper planning at the local government level is impaired by inaccurate and unrealistic expectations placed upon the SWP to deliver water. (New demand is added through land-use decisions with expectations of deliveries of entitlement volumes of SWP water that is not really available.)
- 15 7. Significant economic impacts to agriculture are resulting from the disparity between "paper water" and actual supplies available. Adjusting entitlements to reflect real water would help. Transfer of water must also be based on figures reflecting real "wet" water, not paper water at a discount to face value of over 50%.
8. Business in the state is negatively impacted by the uncertainty caused by the SWP's unrealistic claims to deliver entitlement volumes of water to contractors in the future. Adjusting entitlements to reflect real water would help.
9. The integrity of bonds and debt financing in the state, both at the state level and for individual districts and communities, may be seriously and adversely impacted by the current failure of the SWP to reconcile paper water entitlements with real water supplies available.

10. Reconciling real water with paper entitlements is necessary for the development of rational water and land-use policy and business decisions. Planning by local government and the private sector must be based on an accurate representation of the SWP's ability to deliver water for which it has contracted entitlements.

16

11. DWR's "adjusted request" process for 1993-1994 clearly revealed the inability of the system to provide for entitlement requests. Without reconciling the entitlements with real water supplies available to the system, water contractors are unable to plan for DWR "adjustments" to their needs.

17

12. Harm can be diminished by aligning the contractual obligations of the state with the ability of the system to deliver water. Local planning decisions relating to SWP ability to deliver, and to the actual cost of deliveries on a per-acre-foot basis, would be improved. If the volumes of water are half or less of entitlement figures, then the capital cost of supply systems like the coastal extension are of course double or more when stated as a per-acre-foot amount.

13. Potential liability of the state for failure to acknowledge the actual capabilities of the SWP may be avoided or reduced.

**"No Project Alternative" and "Program Alternatives" (Sections 2.3 and 2.4)**

No discussion appears in either the "proposed action" section or in the "no project alternative" or "program alternatives" of the option of compliance with current contract terms. (DEIR pp. 2-12--2-17) The DEIR fails to analyze or even mention the possibility of invoking Article 18(b), aligning the paper water entitlements with actual, reliable supplies of water. This alternative needs to be fully examined. In particular, adjusting the entitlements to reflect actual, reliable supplies must be explicitly listed and analyzed as an option.

18

The Program Alternatives" comment (DEIR pp.2-15, 2-16) the DEIR lists four "major objectives" of the Monterey Agreement. The objectives listed do not reflect the language in the actual agreement. The objective of the Agreement, in its own language is to avoid litigation and to settle disputes. (Agreement p. 1) It would appear that the objectives were created in the DEIR.

The DEIR also fails to test the "objectives" in the various alternatives. For example, would the system be more reliable with a realistic reflection of water available for delivery in the entitlements? Would the rates and the reliability factors actually

- 18 | be less stable with an even 50/50 split in reductions as proposed in the Agreement? Is "reliability" and rate "stability" actually enhanced by a simple assertion (and absolutely no analysis) that the SWP will be completed? All of these questions merit detailed analysis in the DEIR.

### Statewide Assessment

This section (DEIR p. 3-1) claims to describe the "potential environmental consequences associated with implementation of program alternatives..." at the state and regional levels.

The DEIR acknowledges that the SWP has failed to deliver water to its contractors "in the amounts requested" in four of the last five years, and it further notes that the project yield is decreasing. (DEIR p. 3-1) No connection is made between these key points and the unsubstantiated assertion that the SWP can somehow deliver something on the order of twice as much water.

- 19 | Amazingly, the DEIR then claims "No significant environmental impacts on the Sacramento-San Joaquin Delta or other SWP water sources are anticipated as a result of implementation of the Monterey Agreement." (DEIR p. 3-2) The DEIR goes on to discount impacts to groundwater, water quality, air quality, biological resources, and land use without any analysis of the implications of full implementations of the terms of the Agreement.

- 20 | The DEIR is seriously inadequate without a full analysis of the statewide impacts resulting from implementation of this Agreement as an "integrated package" per principle 13 of the Agreement. Either the Agreement is analyzed in full, as such a package, with the obvious problems of Principles 2b and 12 included, or the DEIR should be considered far short of CEQA compliance.

The "statewide assessment" section concludes with the astonishing notion that "In the absence of significant adverse impacts in both economics and population, mitigation measures are not called for." (p.3-26) The cost of "completion" of the SWP such that it could extract and deliver 4.2+ MAFY would arguably be significant. The DEIR should take another look at this issue.

### Cumulative Impacts

- 21 | The DEIR concludes with a statement that the Monterey Agreement is "speculative" in nature and thus that the cumulative impacts are speculative. It then draws the further conclusion that this somehow absolves the DEIR of properly analyzing the environmental and other impacts as required under CEQA, and it limits the analysis to certain portions of the Agreement, notably excluding Principles 2b and 12. (DEIR p. 6-1) No comment appears regarding the two items.

Again, the DEIR is seriously deficient in studying the cumulative impacts. It fails to even list them, let alone deal properly with EIR requirements. 22

#### Principle 1:

This action has potentially major impact on urban contractors. What would have been the deliveries to the urban contractors if agriculture had not taken the cuts first in the years of the last drought? What would this have meant for delivery amounts? Reliability to the urban contractors is clearly reduced under the proposed action, even with the prospect of buying the water back from agricultural sellers. 23

Reliability of supply is directly connected to land-use decisions. With the present capabilities of the SWP, it would appear that urban contractors can count on reliable deliveries in the range of 1/3 to 1/2 of "face value" of the contract entitlements. This reliable percentage number should be the basis for land-use decisions. This is not presently the case. The DEIR must address this issue. 24

The Draft EIR should clearly identify reliable service levels under drought conditions at least as serious as the recent historical levels under the proposed system and under the current system, and those amounts of water should be the basis of water supply planning and land-use decisions.

#### Additional Comments and Questions on the Draft EIR

1. What is the basis for the 45,000 AF figure in Principle 3, and what is the mechanism and legal process for "retiring" entitlements? (DEIR p. 1-6) Why not "retire" additional entitlements? 25

2. What is the specific basis for determining volumes of water to be classified as "interruptible" and made available at the cost of pumping? Principle 7 states in part: water "not needed for fulfilling entitlement delivery requests or meeting the project operational commitments, including storage goals for the current or following years..." Does this imply that there will be no interruptible supplies available until all storage systems are full? If so, which storage systems are included and what criteria will be employed to make that determination? (Agreement p.5) 26

3. What are the sources of non-project water that are envisioned? (Agreement p.5) 27

4. How can some of the contracts be changed in accordance with this agreement and not others? Is this agreement to be forced on all contractors? The DEIR states that "any and all Contractors may participate in the rights and obligations of any contract" 28

- 28 | amendments approved consistent with the Monterey Agreement." (DEIR p.1-2) How could the provisions of Article 18(b) be invoked for some and not all parties?
- 29 | 5. Have public hearings in the various areas of the state impacted by this program/project been scheduled? If not, why not?
- 30 | 6. Is the financial integrity of the SWP in questions? (Principle 5)
- 31 | 7. Will agricultural contractors purchase water under the new Agreement terms at a lower rate than they sell it to urban contractors under the transfer provisions? If so, what is the rationale for agriculture enjoying a profit on the water purchased and resold to urban contractors when the urban contractors presently have the right to purchase the water with priority over agriculture?
- 32 | 8. The "program alternative" listed under 2.4.1 (DEIR p.2-16) addresses litigation as an alternative. It should be noted that there is no information provided that litigation would be precluded in any way under the new agreement. Nor is there any argument or information suggesting that litigation would be less desirable than the proposed agreement. Clearly those who negotiated in secret came to an agreement they feel is better than litigation. It is not at all clear that the people of California would not be better off with the issues and options handled in the courts.
- 33 | 9. Water use in California is by law supposed to be based on criteria of reasonable and beneficial use. Recent court and administrative rulings have affirmed this basis for water rights. The Monterey Agreement and the DEIR fails to adequately deal with this criteria. For example, no analysis is provided of the implementation of so-called "best management practices" (BMPs) in either the urban or agricultural sectors. The BMP concept was developed to establish a basis for reasonable and beneficial use. The SWP contracts should explicitly require implementation of BMP's in the urban sector (where they have been developed and implemented by some contractors) and in the agricultural sector (where they have not even been developed).

Comments adopted by the  
California Sportfishing Protection Alliance were prepared by:

Robert C. Wilkinson  
1428 West Valerio  
Santa Barbara, CA 93101  
May 1995

## DEPARTMENT OF FISH AND GAME

1416 NINTH STREET

P.O. BOX 944209

SACRAMENTO, CA 94244-2090

(916) 653-4875



July 20, 1995

Mr. Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, California 93427-9565

Dear Mr. Masnada:

The California Department of Fish and Game (DFG) has reviewed the draft Environmental Impact Report (DEIR) for the Implementation of the Monterey Agreement (SCH No. 95023035) prepared by the Central Coast Water Authority (CCWA). The Monterey Agreement is the result of mediated negotiations between the Department of Water Resources (DWR) and the State Water Project (SWP) Contractors to resolve disputes over water supply contracts. To avoid litigation by the SWP Contractors, DWR entered into this agreement which will settle disputes over water allocations and certain operational aspects of the SWP. The stated principal objectives of the Monterey Agreement are:

1. increase the reliability of existing water supplies for both Urban and Agricultural Contractors,
2. stabilize the rate structure to improve the financial viability of the project for all Contractors,
3. increase water management flexibility (including but not limited to transfers) for all Contractors, and
4. complete the State Water Project.

The Monterey Agreement contains 14 principles, which if fully implemented will potentially result in significant adverse environmental impacts. The DEIR describes five major program components as those principles having the potential for causing current, tangible, and quantifiable environmental impacts when implemented. These components are:

1. Revisions to the methodology used to allocate water among SWP Contractors (Principles 1, 2, and 7).

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Mr. Dan Masnada  
 July 20, 1995  
 Page 2

2. Retirement of 45,000-acre feet (AF) of agricultural entitlement (part of Principle 3).3.

Transfer by sale, between willing sellers and willing buyers, of 130,000 AF of entitlement from Agricultural Contractors to Urban Contractors (Principle 4).

4. Changes in control of the Kern Fan Element (KEF) of the Kern Water Bank (part of Principle 3).
5. Changes in the manner in which Castaic Lake and Lake Perris terminal reservoirs may be operated (Principle 6).

The DEIR describes variations of these program components under three proposed scenarios and the no action alternative. We have provided comments on these program components and on some other Monterey Agreement principles that we believe could have adverse consequences for fish and wildlife.

We have prepared general comments on the DEIR followed by specific comments referenced to page and paragraph.

#### GENERAL COMMENTS

#### Use of Programmatic DEIR and Subsequent California Environmental Quality Act (CEQA) Compliance

- 1 The DEIR describes a multi-faceted program that will include implementation actions by a variety of entities including DWR, Kern County Water Agency (KCWA), Metropolitan Water District of Southern California (MWD), and others. We are concerned about the possibility of excessive reliance on this programmatic document as CEQA compliance for many future projects for which the DEIR has provided no specific analysis of impacts. The statement in Paragraph 1.1 on page 1-2 raises the question of what constitutes a "good and detailed analysis of the program" so that "no further environmental documentation would be required" for many subsequent activities. What may be considered adequate analysis for a programmatic document, and thus generate no comment now, may be entirely inadequate if no tiered environmental analysis is planned.

The DEIR indicates in numerous places (three times on page 3-2, three times on page 3-3, four times on page 3-4, etc.) that some of these future actions would be evaluated in future CEQA documents and be subject to California Endangered Species Act (CESA) and Federal Endangered Species Act (ESA) compliance. Although CCWA is the designated lead agency for preparation of the programmatic DEIR, other entities besides CCWA will have the CEQA and CESA responsibilities for potential future actions which



Mr. Dan Masnada  
 July 20, 1995  
 Page 3

are institutionally enabled by the Monterey Agreement. We recommend inclusion of a table listing probable future actions under this program, who will approve or carry out the actions, who will likely be the lead agency, and the type of site-specific CEQA document most likely appropriate for the circumstances. 1

#### **Threatened, Endangered, and Candidate Species and CESA and FESA Consultation**

Just as the programmatic DEIR does not contain an adequate CEQA analysis for future site-specific actions under the Monterey Agreement, the information presented in the DEIR on the effects of the proposed project on the State- and federally-listed winter-run chinook salmon, delta smelt, Tipton's kangaroo rat, blunt nosed leopard lizard, San Joaquin kit fox, and Federal candidate Sacramento splittail and measures to avoid or offset these effects is not sufficient for the DFG to develop a jeopardy or no-jeopardy finding with regard to Monterey Agreement implementation. 2

The table we describe above should identify those actions which may affect threatened or endangered species and the agency responsible for initiating CESA consultation with DFG. CCWA should initiate such a consultation for any Monterey Agreement implementation action that could affect listed species and for which no lead agency for subsequent CEQA documentation is identified.

#### **Methodology to Allocate Water Among SWP Contractors**

This program component of the Monterey Agreement consists of 3 principles. It states that: 1) allocation of water from existing facilities will be based on entitlements rather than the previously used methodology; 2) water allocations will be in proportion to each Contractor's share of total Contractor entitlements in years when SWP water supplies are less than demands; and 3) the three current categories of excess water [surplus, wet weather, and 12(d)] will be replaced by a single category called interruptible water.

The DEIR does not present an overall picture of likely outcomes that could be expected to occur under this component of the program. Revisions to this allocation methodology could result in larger supplies to agricultural users particularly in dryer years. If those supplies are not transferred to urban users, the net effect of increasing supplies and supply reliability can be accompanied by adverse impacts associated with increased drainage problems and conversion of high value wildlife crops to low wildlife value crops such as vineyards and orchards. 3

Mr. Dan Masnada  
July 20, 1995  
Page 4

- 3 | Shifts in the seasonal pattern of demand and deliveries will affect project operations. The DEIR should fully disclose those impacts and offer mitigation to offset or reduce those impacts.

**Retirement of 45,000 AF of Agricultural Entitlement**

- 4 | In conjunction with the sale or lease of the Kern Fan Element by DWR to designated Agricultural Contractors, an annual State Water Project entitlement of 45,000 AF will be transferred to DWR and retired. Urban Contractors may be given access to the KFE property and use of its assets subject to approval by the Agricultural Contractors.

The DEIR should describe how frequently the foregone entitlement might be made up from delivery of water in the interruptible supply category. Alternative fates for the 45,000 AF of relinquished entitlement should be considered including use of that as water supplies for alternative wetland habitat in the Tulare Basin to offset impacts associated with contaminated evaporation ponds.

**130,000 AF Transfer From Agricultural to Urban Contractors**

This principle calls for the permanent sale of 130,000 AF of entitlement from Agricultural Contractors to Urban Contractors (or to non-SWP Contractors). Implementation of this principle has the potential for adverse effects in those jurisdictions both selling and acquiring the entitlement by modifying agricultural practices and accommodating growth, respectively. The DEIR states that this would result in some contractors receiving more water and some receiving less water, but that the cumulative total would remain the same.

- 5 | A more detailed discussion of potential impacts and mitigation measures based on likely scenarios is warranted. Consideration of adverse effects resulting from a change in cropping patterns is necessary since changes in agricultural land use in the San Joaquin Valley would generally be exempt from CEQA and would not be further evaluated. Substantial environmental benefits would result if water made available for transfers came from districts having highly saline soils and subsurface drainage problems.

- 6 | The DEIR should explain why three scenarios for Principle 4, the permanent sale of 130,000 AF of annual entitlements from SWP Agricultural Contractors to SWP Urban Contractors or other non-SWP Contractors are depicted. Principle 4 states that Kern County Water Agency is obligated to make available any portion of

Mr. Dan Masnada  
July 20, 1995  
Page 5

the 130,000 AF not offered by other Agricultural Contractors, hence, the only basis for less water being transferred is the lack of willing buyers.

6

#### Control of the Kern Fan Element

Principle 3 states, in part, that property comprising the KFE of the Kern Water Bank owned by DWR will be sold or leased on a long-term basis to designated Agricultural Contractors. DFG has worked closely with DWR and other agencies, to develop a draft Habitat Conservation Plan (HCP) for the KFE that addresses the terrestrial impacts of certain proposed activities on the Kern Fan including groundwater recharge and extraction. This plan outlines a conservation strategy to mitigate adverse impacts to the many threatened and endangered species which occupy the area and to provide key contributions to the recovery of these species by the focused management of some Kern Water Bank lands for these species consistent with the water banking activities. None of the three alternative scenarios for KFE development described in the DEIR would achieve the conservation goals of the HCP.

The DEIR fails to adequately discuss how transfer of the facility will impact listed special status wildlife such as the Tipton's kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox. The DEIR needs to explicitly state that prior to any long-term commitment of KFE lands a site-specific CEQA document and management plan will be required. This plan should describe the design and operation of the KFE including both conceptual and specific elements such as the management of breeding and wintering habitat of shorebirds and waterfowl; management of upland habitat for game and nongame species; management of habitat for endangered plant and animal species; mitigation banking opportunities; and consumptive and nonconsumptive recreational uses of the property.

7

In addition, the DEIR needs to identify the potential sources of water for the KFE and describe the amount of surface area needed to achieve a given quantity of groundwater recharge.

8

DWR has agreements with DFG committing to the management of certain lands within the KFE in perpetuity as habitat for threatened and endangered species. Habitat management required by these agreements offsets impacts to the species resulting from various past DWR activities on the KFE lands and elsewhere. DWR retains title to these lands, however, these agreements stipulate that DWR shall not sell, lease, or use the mitigation land for other than the designated wildlife purpose without the approval of DFG. The DEIR should clearly indicate that before the sale or

9

Mr. Dan Masnada  
July 20, 1995  
Page 6

- 9 | lease of the KFE lands described in Principle 3 can occur, DWR must consult with DFG and reach agreement on how the long-term management of these mitigation lands within the KFE will be continued under new ownership. It should also point out that regardless of any change in ownership of the KFE, the development of facilities of the KFE and the Kern Water Bank as a whole will still require completion of a Habitat Conservation Plan.

#### **Operations of Castaic Lake and Lake Perris Reservoirs**

Principle 6 allows SWP Contractors who participate in repayment of the costs of Castaic and Perris reservoirs the opportunity to directly utilize approximately 50 percent of the active storage capacity of these reservoirs in order to optimize water storage and supply operations. The DEIR concludes that no adverse impacts to sensitive species would be expected to occur under implementation of Scenario A, B, or C of the Proposed Action, hence no mitigation measures are suggested.

- 10 | Scenarios A and C will cause moderate changes in water storage and lake level at both Castaic and Perris reservoirs. Higher than average lake levels will occur under Scenario A, whereas lower than average levels will occur under C. Both of these scenarios have the potential to extirpate existing shoreline trees and shrubs. The DEIR acknowledges that these impacts will occur and states that vegetation would be expected to quickly establish along the new shoreline. We have several concerns with this line of reasoning and believe that there is potential for adverse impacts to sensitive species. There will be a temporary loss of shoreline riparian habitat due to either inundation or desiccation of vegetation, lasting until riparian vegetation with equivalent age, structure, and composition becomes established and matures. This will in turn result in a temporary loss of habitat for migratory and resident avifauna and other wildlife. Loss of riparian vegetation will also be detrimental to fish species occupying the reservoirs that rely on submergent and emergent vegetation for shade, cover and spawning habitat.

One of the conditions of operating the terminal reservoirs is that the contractor-requested withdrawals would be a "loan" that would have to be paid back within 5 years. The changes in lake levels that will occur as a result of storage withdrawal and then filling will make it unlikely that a mature stand of riparian vegetation will develop within this 5- year- time frame.

Mr. Dan Masanda  
July 20, 1995  
Page 7

The DEIR needs to describe mitigation measures for plants, fish and wildlife that may be impacted due to either permanent or temporary losses of habitat. Early consultation is recommended to develop measures to avoid or reduce impacts to fish and wildlife resources.

10

The DEIR should also fully disclose how reoperation of Perris Reservoir may affect wildlife habitat at Lake Perris and at the San Jacinto Wildlife Area.

#### **Evaluation of Sacramento-San Joaquin Delta and Upstream Effects**

The DEIR (Chapter 3, page 3-2) asserts that no significant environmental effects on the Sacramento-San Joaquin Delta or other SWP water sources are anticipated as a result of the Monterey Agreement. This conclusion is not supported by any analysis of operations of Delta facilities or other project facilities north and south of the Delta. It seems obvious that development of groundwater storage facilities, changed operation of southern storage reservoirs, opportunities to transport nonproject water in SWP facilities and to store SWP water in both project and nonproject surface storage facilities both within and outside the service area, the creation of the "interruptible supply" category, and, finally, the reaffirmation by DWR of the commitment to complete the SWP, combine to create substantial potential for program effects in the Delta and upstream. The significance of these effects, either individually or cumulatively, cannot be judged without analysis, none of which is presented in the DEIR.

11

The DEIR should describe the range of likely actions under this program by DWR and the U.S. Bureau of Reclamation pursuant to the Coordinated Operation Agreement and how these actions will affect the Delta and upstream reservoir operations. An analysis of the potential operational changes affecting the Delta and rivers and reservoirs upstream of the Delta is necessary to produce an adequate cumulative effects analysis pursuant to CEQA and CESA. It is DFG's position that operating conditions permissible under present regulatory standards do not provide optimum conditions for fish and wildlife resources.

12

The DEIR indicates DWRSIM was used in the analysis, however, beyond the three levels of demand that are identified, the assumptions used in DWRSIM runs are not described. The DEIR must disclose assumptions regarding operation of the Kern Water Bank, south of the Delta reservoirs, and other related project and nonproject facilities in and upstream of the Delta in order for the reader to interpret model results.

13

Mr. Dan Masnada  
July 20, 1995  
Page 8

- 14 | The DEIR should fully disclose how Principles 8 and 9 could facilitate increased water deliveries from the Delta and to the water project service areas and how those measures could adversely affect fish and wildlife resources.

#### **Mitigation and Monitoring Programs**

- 15 | The DEIR offers very few specific mitigation measures to avoid, reduce or offset impacts and never specifies who will be responsible for implementing measures that are identified. Identification of mitigation of some site-specific impacts may be appropriately deferred when it is certain that subsequent CEQA analysis will be carried out. When no additional impact analysis and review is likely, as in the case of southern reservoir operations, a commitment to adequate mitigation should be defined in the programmatic EIR. This is particularly important because CCWA has no direct connection to most of the impact-causing actions that could be undertaken pursuant to the principles in the Monterey Agreement.

#### **Growth Inducing Impacts**

- 16 | The DEIR's treatment of growth inducing impacts does not present an objective view of the potential service area impacts and cumulative growth inducing impacts of the proposed project. The DEIR fails to address the program's contribution to potential adverse service area impacts and does not outline a specific plan to offset those impacts. This approach is inconsistent with CEQA guidelines.

The DEIR should describe a process for preparation of mitigation plans or regional multi-species plans and implementation of recommended mitigation measures to offset growth-inducing impacts. These plans should further the goals of the CESA with measures to acquire sensitive habitats and key movement corridors throughout the project service area for listed and candidate species. In the DFG's view, signatories to the Monterey Agreement and the lead agencies should initiate, help fund, and participate in an interagency planning effort with agencies such as the Southern California Association of Governments. This coordinated planning group would implement a comprehensive mitigation plan for affected areas using funds provided by project beneficiaries, perhaps from a surcharge on delivered water or subdivision development fees.

Mr. Dan Masnada  
July 20, 1995  
Page 9

### **Fisheries Impact Analysis**

The DEIR fails to adequately address potentially significant adverse impacts, minimizes the significance of those impacts that are identified and does not substantiate claimed benefits of the project to fishery resources. It also fails to include any substantial discussion of a project alternative which avoids or minimizes fishery impacts. 17

### **Cumulative Effects**

The DEIR should include a discussion of the cumulative effects of the Interim South Delta Program (ISDP) and the Interim North Delta Program (INDP) proposed by the DWR. The SWP operational effects of the Monterey Agreement and these programs, which will increase the export capability of the SWP, will be different from changes in SWP operations due to the Monterey Agreement alone. Both the ISDP and the INDP are reasonably foreseeable probable future projects with effects that may compound or increase environmental effects of Monterey Agreement implementation. 18

The DEIR should acknowledge the ongoing CALFED Bay-Delta Program whose task is to develop and implement a long-term solution to environmental and water supply problems related to the Delta. This is relevant to Principle 12 which affirms DWR's obligation to make all reasonable efforts to complete the State Water Project. 19

### **Specific Comments**

Page 1-3; Figure 1.2-1

This Figure should depict the Coastal Branch Phase II Project and give the estimated date of completion. 20

Page 1-7; Principle 12

This principle affirms that all reasonable efforts will be made to complete the SWP. The DEIR should describe facilities of the SWP that remain to be built, projected water deliveries and the range of impacts that are expected to occur. 21

Mr. Dan Masnada  
July 20, 1995  
Page 10

Page 1-8; Table 1.7-1

- 22 | We believe the Table should be modified to indicate that Principle 8, asserting the right to transport non-Project water in SWP facilities, has potential for future environmental impacts. Actions by DWR in connection with Principle 12 also will have inevitable environmental consequences.

Page 2-4; Section 2.1.3: Kern Water Bank

- 23 | The implementation of the Kern Water Bank is an integral part of the Monterey Agreement and is described in every scenario for the project. However, a final EIR covering all aspects of the program and its potential impacts on the Delta has never been completed. Such an analysis is essential prior to development and operation of groundwater recharge and extraction facilities.

Page 2-14; Section 2.2.1: Scenario A

- 24 | In this section and in several other places the text states that impacts can occur to both native and "disturbed" vegetation. The text needs to describe the characteristics of "disturbed" vegetation.

Page 2-15

- 25 | The use of a program objective of completing the SWP as a criteria to evaluate alternatives to the proposed project is not appropriate, in our opinion, since the proposed project does not accomplish this objective either.

Page 2-15; Section 2.4

- 26 | The DEIR states that the Monterey Agreement has four major objectives. The DEIR states that because of the complexity of the Monterey Agreement and of the breadth of program goals, it is extremely difficult to identify program alternatives capable of accomplishing all of the program goals. Clearly, achievement of these objectives will result in severe unmitigated impacts to fish and wildlife.

Page 2-16; Last Paragraph

- 27 | The rationale for rejecting this alternative is allegedly based on a timetable that the program must meet, yet no timetable has been presented.



Mr. Dan Masnada  
July 20, 1995  
Page 11

Page 3-2; Paragraph 4

The program's improved supply reliability should be evaluated for its effects on fish and wildlife resources. Increasing water project reliability can also have the consequence of inducing growth, resulting in expansion of urban, industrial, and residential areas as well as conversion of crops having high wildlife values to crops such as vineyards and orchards with substantially lower values.

28

Page 3-4; Paragraph 3

The nature of subsequent CEQA documents should be discussed particularly since later in the DEIR it states that impacts are not significant, which suggests that categorical exemptions might be pursued.

29

Page 3-8, 3-9; Figures 3.6-2 and 3.6-3

It is not clear why the maximum total SWP deliveries (at 3.0- million acre feet demand) would be reduced from the 3- million acre feet (Figure 3.6-2) to approximately 2- million- acre feet with implementation of the 130,000 acre feet entitlement transfer from agricultural to urban users (Figure 3.6-3). The same effect seems apparent in Figures 3.6-4 and 3.6-5 at the 4.12- million acre feet demand level.

30

Page 3-21

Impacts to nearly 20,000 acres of high value wildlife habitat should be addressed.

31

Page 3-21; Section 3.6.3

Since, in our view, impacts will likely be significant specific mitigation measures should be identified.

32

Page 4-24; Upstream Consequences

The statement that the summer and early fall are the periods when diversions from the Delta are most highly constrained is incorrect.

33

27-11

Mr. Dan Masnada  
July 20, 1995  
Page 12

Page 4-29

- 34 | Discretion for contractors to withdraw water from Castaic Lake and Lake Perris will create storage capacity that will be filled, when possible, by the export of water from the Delta during wet periods (interruptible water). This water would flow toward the Golden Gate in the absence of the Monterey Agreement. This increase in exports could cause an increase in indirect fish losses in the Delta. At this time, no measures are in place to mitigate these impacts.

Page 4-31; Section 4.2.1; First Column; Third Bullet

- 35 | This Section describes the refill of water that could occur if water was purchased in or above the Delta and its potential to increase pumping rates in given months when the export capabilities are available. Again, this would affect the indirect loss rates that currently occur in the Delta. At this time no measures are in place to mitigate these impacts.

Page 4-31; Section 4.2.2; Second Column; Section on Environmental Consequences

- 36 | If the KFE is sold or leased to another agency, who will be responsible for completion of the EIR?

Page 4-55; Table 4.4-5; Name Changes

- 37 | Rainbow trout should be changed from *Salmo* to *Oncorhynchus*, Mississippi silversides should be changed to Inland silversides. Brown bullhead should be changed from *Ictalurus* to *Ameiurus*.

Page 4-57; Second Column; Second Sentence

- 38 | Mississippi should be replaced with Inland.

Page 4-63; First Column

- 39 | Same comment as page 2-14, about disturbed vegetation.

Page 4-63; Second Column; Scenarios B and C

- 40 | The words "minimal" and "moderate" do not suggest a level or direction of change. The text should describe, in a quantitative manner, the changes in lake levels and refer the reader back to the appropriate figures showing this information.

Mr. Dan Masnada  
July 20, 1995  
Page 13

Page 4-81; Paragraph 2

This paragraph indicates a habitat conservation plan may be required for development of the KFE property. Such a plan will be required prior to development of ground water recharge and storage facilities on the property.

41

Page 6-1; Cumulative Effects, paragraphs 1 and 2

Several aspects of the Central Valley Project Improvement Act (CVPIA), such as the land retirement, water acquisition, and water transfer provisions, could have effects similar to those resulting from implementation of several Monterey Agreement principles, including the ones discussed in this chapter. Although it may not be possible to complete a detailed analysis of these interactions, the DEIR should acknowledge that additive impacts of similar aspects of the two programs will occur.

42

The DEIR should also acknowledge that SWP operations, which must conform with the provisions of the Bay/Delta Accord and the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary recently adopted by the State Water Resources Control Board, project operations will not be the same with implementation of the Monterey Agreement as without it.

43

Page 6-1; Retirement of 45,000 AF of Agricultural Entitlement

The final two sentences in this Section are not at all clear. We recommend they be revised to clarify their meaning.

44

Page 6-2; Domenigoni Reservoir discussion

While possibly true for recreation impacts, it is not accurate to say that impacts to biological resources at Castaic Lake and Lake Perris will be offset by construction of Domenigoni Reservoir.

45

Mr. Dan Masanda  
July 20, 1995  
Page 14

This concludes our comments at this time. If you have any questions please contact Mr. Jim White, Environmental Specialist, Department of Fish and Game, 1416 Ninth Street, Room 1341, Sacramento, California, 95814, (916) 653-3540.

Sincerely,



John Turner, Chief  
Environmental Services Division

cc: Resources Agency  
Sacramento, California

Mr. Jim White  
Department of Fish and Game  
Sacramento, California

State Water Resources Control Board  
Sacramento, California

Department of Water Resources  
Sacramento, California

U.S. Bureau of Reclamation  
Sacramento, California

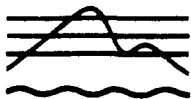
U.S. Fish and Wildlife Service  
Sacramento, California

National Marine Fisheries Service  
Santa Rosa, California

Kern County Water Agency  
Bakersfield, California

Metropolitan Water District of Southern California  
Los Angeles, California

Mr. Dick Daniel  
CALFED  
Sacramento, California



P A C I F I C I N S T I T U T E  
FOR STUDIES IN DEVELOPMENT, ENVIRONMENT, AND SECURITY

Comments on  
Draft Environmental Impact Report on  
Implementation of the Monterey Agreement

Comments Submitted to  
Dan Masnada  
Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buelton, CA 93427-9565

Comments Submitted by  
Santos Gomez  
Senior Research Associate  
The Pacific Institute for Studies in Development, Environment, and Security  
1204 Preservation Park Way  
Oakland, CA 94612  
Phone: (510) 251-1600  
Fax: (510) 251-2203  
E-mail: [sgomez@ix.netcom.com](mailto:sgomez@ix.netcom.com) or [pistaff@pacinst.org](mailto:pistaff@pacinst.org)

Comments Submitted by Fax on July 20, 1995  
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C.C.W.A.

1204 PRESERVATION PARK WAY  
OAKLAND CA 94612 U.S.A.

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PHONE: 510 251-1600  
FAX: 510 251-2203

28-1

## **About the Pacific Institute**

The Pacific Institute for Studies in Development, Environment, and Security is an independent, not-for-profit center created in 1987 to do research and policy analysis in the areas of environment, sustainable development, and international security. Underlying all of the Institute's work is the recognition that the pressing problems of environmental degradation, regional and global poverty, and political tension and conflict are fundamentally interrelated, and that long-term solutions must consider these issues in an interdisciplinary manner. The Institute strives to improve policy through nonpartisan research and consistent dialogue with action-oriented groups from the local to international levels.

Our California work on fresh water resources, along with our work on global water issues, pollution and the environment, and sustainability has received a good deal of attention in the media, amongst policymakers, and in local, regional, and national agencies. In this light, we offer the following comments on Draft Environmental Impact Report on Implementation of the Monterey Agreement (hereafter referred to as DEIR).

## **Introduction**

California's water future depends on the choices that are being made now or will be made within the next few years. The Pacific Institute has a long-standing program looking at how water resources are managed and used in the state of California and elsewhere. Our work suggests that the water policies that helped the state to become the agricultural and economic giant it is today are not up to the challenge of the 21st century. Yet water resource managers throughout the state continue to rely on outdated policies and to plan for the future on the basis of outdated and inappropriate assumptions.

We recognize that State Water Project (SWP) reform may be desirable, and generally support efforts to ensure greater efficiency, reliability, financial integrity, public participation, and equity in water resource management and use. We do not, however, feel that the Monterey Agreement successfully achieves these worthwhile goals. Moreover, we feel that the DEIR does not adequately address a host of important key issues.

Here we comment on two issues not adequately addressed in the DEIR -- third-party impacts (Principle 4) and the environmental and economic implications of Principles 2b and 12. We also comment on several omitted issues -- the potential for more efficient agricultural and urban water use, the potential for greater use of reclaimed water, and the need to eliminate groundwater overdraft. The ultimate goals are to minimize and avoid litigation over water allocation, to improve efficiency and reliability of water supply and use, to reduce uncertainty and increase flexibility in water management, and to equitably share the benefits and burdens of the State's water systems. We offer our comments in this light and with hope that they will improve long-term water policy and planning.

### **The DEIR Does Not Address Third-Party Impacts of Water Transfers**

The Monterey Agreement addresses three types of entitlement transfers: (1) agricultural to urban entitlement transfers, (2) transfers to non-contractors, and (3) other water transfers. Under the agricultural to urban entitlement transfers, agricultural contractors will make available for permanent transfer to urban contractors 130,000 acre-feet of annual entitlement. Kern County Water Agency (KCWA) is obligated through the year 2010 to make available any portion of this 130,000 acre-feet not made available by other agricultural contractors. Further, any permanent transfer of entitlement by agricultural contractors to non-contractors will be considered part of the 130,000 acre-feet, provided urban contractors have been allowed 90 days to exercise a right of first refusal. Finally, agricultural contractors and the DWR must expeditiously approve any permanent sales of entitlement among contractors.

As the DEIR briefly noted, the permanent transfer of 130,000 acre-feet of water entitlements from agricultural contractors to urban contractors and non-SWP contractors has the "*potential to affect activities and land use patterns in those jurisdictions . . . relinquishing and acquiring the entitlement*" (emphasis added). The DEIR, however, fails to elaborate on the potential affects and only notes that "[e]ffects in . . . areas relinquishing water entitlements are likely to be centered on agricultural practices while those in areas acquiring water . . . may relate to growth accommodations." The omission of considerations of the impacts of implementing the recommended water transfer policies in the DEIR is a serious flaw.

2 To simply say that "[t]he location of the eventual sellers and buyers of water entitlements is not known at this time" is not enough. At a minimum the DEIR should have assessed the impacts associated with the two extreme cases -- in the worst case KCWA is required to permanently transfer the entire 130,000 acre-feet of water and in the best case KCWA is not required to permanently transfer any water. In the worst case scenario, the third-party and environmental impacts could be significant. Knowing the range of potential impacts in advance could give area of origin communities the opportunity to develop plans on how to best cope with and mitigate those impacts.

3 To address this flaw we urge you to assess the potential environmental and third-party impacts (social and economic) of, at a minimum, KCWA having to permanently transfer 130,000 acre-feet of water. Issues to consider include effects on aquatic and other natural ecosystems, groundwater, and third-party impacts. Groundwater overdraft problems exist within the KCWA. Without adequate safeguards to ensure that water sold is not replaced with groundwater, groundwater overdraft problems are likely to be aggravated. At a minimum, the DEIR should have assessed the potential impacts on groundwater overdraft associated with the permanent transfer of 130,000 acre-feet of surface water by KCWA and replacing it with groundwater.

4 Similarly, efforts to assess the effects on aquatic and other natural ecosystems associated with the permanent transfer of 130,000 acre-feet of water from KCWA should have been conducted. It is insufficient to say that on a statewide basis "vegetation, wildlife, or protected species or habitats" are not likely to be affected.

5 Finally, efforts to assess third-party impacts should have been investigated. Acknowledging the difficulty in assessing social impacts without having identified willing buyers and sellers is insufficient. Studies have shown that the cumulative effect of successive temporary transfers or permanent transfers can be severe. They range from poorly maintained irrigation systems to direct and secondary economic impacts associated with land fallowing. The 1992 report of the National Research Council, *Water Transfers in the West*, identified third-party impacts (impacts on local businesses, local government, and employment) as potentially significant and suggests that third parties be part of the water transfers negotiations. We urge you to consider adding the necessary provisions to the Monterey Agreement to ensure



meaningful public discussion of third-party impacts and to assess the range of potential third-party impacts of the proposed 130,000 acre-feet permanent transfer of SWP water. For example, a range of estimates, all based on the assumption that KCWA would be required to meet the 130,000 acre-feet requirement and changing the mix of potential sellers, could and should be part of the final environmental impact report. Failure to include even this level of analysis is contrary to good public policy and in no way furthers a vision of a sustainable California. The future success of water transfers require that the needs of rural communities (exporting regions) be protected.

5

Also missing from the DEIR is a discussion of how KCWA is to use the revenues generated from the transfers of KCWA water. Questions like "Will they be used to mitigate social community impacts?," and/or "Will they simply go to maintain KCWA irrigation systems?" should have been answered by the community. We urge you to hold meetings in and seek input on these questions and other key issues from potential exporting communities.

6

#### **The DEIR Does Not Address the Environmental and Economic Implications of Principles 2b and 12**

Implementation of Principles 2b and 12 of the Monterey Agreement do not appear to be addressed in any form. Principle 2b would delete Article 18(b) from the SWP contracts and eliminate the initial supply reduction to agricultural contractors in periods of emergency. Principle 2b, by deleting Article 18(b), seems to implies the completion of the SWP. Principle 12 explicitly commits the California Department of Water Resources to complete the SWP. Further, given current shortages and existing water quality regulations that limit diversion and export of water from the Bay/Delta, proceeding with implementation of provisions 2b and 12 will cause extensive and severe adverse impacts on the aquatic environment of the Bay/Delta and potentially on California's economic well-being. These potential impacts are completely ignored by the DEIR.

7

**The DEIR Does Not Explore Potential Water Conservation and Efficiency Savings,  
Potential from Reclaimed Water Use, and Mechanisms to Eliminate Groundwater  
Overdraft**

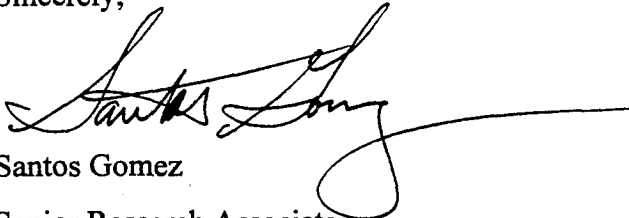
8 Missing from the DEIR is a discussion of the alternatives to water transfers and building out of the SWP. The DEIR does not even mention the potential for conservation and efficiency savings from improved irrigation practices and irrigation technology, savings from improved urban water use, the potential for reclaimed water use by the agricultural sector, or the need to eliminate groundwater overdraft. Over the last year, as part of our Water and Sustainability Program, we studied these and other issues. Our results appear in our May 1995 report titled *California Water 2020: A Sustainable Vision* (a copy of which is enclosed).

Briefly, our findings show that without severely impacting any particular sector, groundwater overdraft can be eliminated, urban and agricultural water use can be made more efficient and productive, and California's natural ecosystems can be protected and restored, through a range of efficiency programs, agricultural crop switching, and increased use of reclamation water. By 2020, statewide average urban water demand could be significantly reduced from today's level. Agricultural production could gradually shift away from the current emphasis on low-valued, water-intensive crops, increasing farm revenues while decreasing farm water needs. Substituting reclaimed water for surface or groundwater could free water of higher quality for other uses and/or help eliminate groundwater overdraft. This sustainable vision for the year 2020 would produce a more stable business environment, reduce uncertainty over water supplies, and increase the state's economic viability and competitiveness. Alternatives, like those suggested in our report, are consistent with the stated objectives of the Monterey Agreement and are good public policy. Further, they do not require the construction of new costly supply water projects -- projects California cannot afford-- nor any drastic advances in technology or extraordinary actions on the part of any individual or sector. What these alternatives require is the adoption of policies to encourage and guide the positive trends already underway.

## Recommendations

In summary, based on the available information we conclude that the DEIR for the implementation of the Monterey Agreement does not adequately address a host of environmental and third-party impacts. First, the DEIR fails to address the potential environmental and third-party impacts associated with the permanent transfer of 130,000 acre-feet of water from KCWA. The DEIR lacks any discussion on the public's role in water transfer policy and on how the revenues generated from the transfer of KCWA water are to be used. Second, the DEIR fails to address the potential and economic implications of Principles 2b and 12. Third, the DEIR fails to explore alternatives to the permanent transfer of SWP water and the building out of the SWP - alternatives we believe are not only preferable, but less costly, more environmentally sound, and technically feasible. Finally, we urge you and the Central Coast Water Authority (CCWA) Board to postpone certification of the final environmental impact report (final EIR). It is premature for the CCWA to consider certification of the final EIR when comments on the DEIR have not been received, much less considered and addressed. Good public policy requires full consideration of all options and meaningful democratic public discourse, and we urge CCWA to take this course.

Sincerely,



Santos Gomez  
Senior Research Associate



July 20, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buelton, CA 94327-9565

California Office  
Rockridge Market Hall  
5655 College Ave.  
Oakland, CA 94618  
(510) 658-8008  
Fax: 510-658-0630

RE: Draft Environmental Impact Report for Implementation of the Monterey Agreement

Dear Mr. Masnada:

- 1 Behind closed doors, a group of State Water Project (SWP) contractors, the Central Coast Water Authority (CCWA), and the Department of Water Resources (DWR) drafted the Monterey Agreement, a complex set of principles which, if implemented, would apparently have far-reaching implications for the future of the SWP. The Environmental Defense Fund (EDF) recognizes that SWP reform may be desirable, and generally would support efforts to ensure greater reliability, efficiency, and financial integrity for the SWP and its contractors. Unfortunately, we do not feel that we have sufficient information to decide whether the Monterey Agreement negotiators successfully achieved these worthwhile goals. Moreover, we feel the Draft EIR on the implementation of the Monterey Agreement inadequately addresses, or does not address at all, a host of important issues.

Because of the short comment period, the press of other major events affecting California's water resources, and the inability to schedule desired briefings, we have not yet had the opportunity to analyze the Agreement and the Draft EIR in detail. We will therefore focus our initial comments on (1) the financial restructuring provisions of Principle 5 and (2) the buildout provisions stated explicitly in Principle 12 and implied in Principle 2(b). We also intend to submit further comments as we learn more about the Agreement and the Draft EIR.

- 2 We therefore respectfully request that you postpone the closing of the comment period and, if necessary, open the Agreement to other participants to allow both time and opportunity for a full airing of relevant issues and concerns.

*National Headquarters*

257 Park Avenue South  
New York, NY 10010  
(212) 505-2100

1875 Connecticut Ave., N.W.  
Washington, DC 20009  
(202) 387-3500

1405 Arapahoe Ave.  
Boulder, CO 80302  
(303) 440-4901

128 East Hargett St.  
Raleigh, NC 27601  
(919) 821-7793

1800 Guadalupe  
Austin, TX 78701  
(512) 478-5161

## 1. Principle 5: Financial Restructuring

We have a number of concerns and questions about Principle 5, which allocates funds to the SWP's urban and agricultural water contractors.

**Disbursement of Funds** We do not believe the California Water Code allows the parties to disburse funds to SWP contractors as provided for in the Agreement. California Water Code § 12937(b) explicitly states that "[a]ll revenues from the sale, delivery or use of water or power, and all other income or revenue... [derived] from the State Water Resources Development System" may be used *only* for specified purposes in the following order of priority: 1) maintenance and operation; 2) annual payment of the principle of and interest on the bonds; 3) transfer to the California Water Fund as reimbursement for funds used to build the SWP; and 4) acquisition and construction of water facilities. Nowhere does the statute provide for "rebates" to SWP contractors, as Principle 5 would do.

Unlike rebates to the contractors, however, funding for environmental improvements is contemplated by California law. Section 11900 of the Water Code states: "The Legislature finds and declares it to be necessary for the general public health and welfare that preservation of fish and wildlife be provided for in connection with the construction of state water projects." In light of this explicit finding and declaration, EDF believes that, at the very least, any reshuffling of SWP funds can and must provide, as a priority, for environmental mitigation and restoration.

Not only does the statute authorize environmental improvements, but the SWP contractors have already committed to it. The December 1994 Bay-Delta Accord, signed during the same month as the Monterey Agreement, commits to funding a \$180 million program of so-called "Category III" improvements. SWP contractors (and other signatories to the Bay-Delta Accord) thus far have been unable or unwilling to find sufficient funds to fulfill this Category III commitment.<sup>1</sup> At a minimum, full consideration should be given to addressing this commitment through an explicit dedication of SWP rebates or similar sources of funds. Moreover, as part of any long-term Bay-Delta solution, an Ecosystem Restoration Trust should be created to oversee continued environmental funding and improvements. Both Category III and the Restoration Trust could also serve, in whole or in part, as a mechanism through which the state would meet some or all of its cost-share obligations under the 1992

<sup>1</sup>We do acknowledge and commend the \$10 million per year committed in advance by the Metropolitan Water District of Southern California. We are also in receipt of a preliminary draft "Summary of 1993 Bay-Delta Costs Paid by State Water Project Contractors." Unfortunately, we do not understand the basis for this compilation, nor its relationship (if any) to the Category III commitment.

- 3 | Central Valley Project Improvement Act. (Additionally, California's environmental mitigation and restoration efforts could be enhanced by coordinating the Category III, Bay-Delta Ecosystem Restoration Trust, and CVP Restoration Fund implementation efforts.) None of these issues or alternatives is addressed by the Monterey Agreement or the Draft EIR.

**Supporting Data** We are unclear about how the figures in Principle 5 are derived. Exhibit A, entitled "State Water Project Payment Management Program," apparently uses a variety of revenue and other data from DWR Bulletin 132-93. This Bulletin contains a great deal of information. On what data, specifically, do the Exhibit A figures rest? Assumptions about construction of future water facilities, water delivery commitments, water rates, and interest rates should be provided in explicit detail. In addition, DWR has failed to provide documentation demonstrating that reimbursement to the California Water Fund, including interest payments, will in fact be complete before money is disbursed to the SWP contractors. In short, a complete exposition of the Draft EIR's assumptions, data sources, and methodologies is necessary. The financial restructuring of the SWP should not be based on figures produced from "black box" calculations.

4 | **2. Completion of the State Water Project**

The Draft EIR entirely omits any discussion of the environmental impacts of completing the SWP. Principle 12 of the Agreement explicitly calls for completion of the project. Principle 2(b), by deleting Article 18(b) of the SWP water supply contracts, implies completion of the project. (Article 18(b), if invoked, would result in the reduction of entitlements to conform with the amount of "wet water" the existing SWP can provide.) The Draft EIR's failure to consider the environmental impacts of these important Principles is the most salient example of the Draft EIR's inadequacy.

**3. Other Concerns**

- EDF agrees with many of the comments submitted to the Central Coast Water Authority by others interested in the implications of the Monterey Agreement. The Planning and Conservation League, for example, raised a number of excellent points. (Letter to the Central Coast Water Authority, 6/21/95.) Among other matters, we agree with PCL that the Draft EIR lacks the specificity necessary for the Monterey Agreement to be carried out without further environmental review.
- 5 |
- 6 | Citizens Bob Wilkinson, Carolee Krieger, and Arve Sjøvold also raised a number of important concerns. In particular, we agree with them that the Draft EIR fails to address

adequately the SWP reform alternatives to the Agreement, such as the invocation of Article 18(b). Moreover, we share their skepticism that Principle 13 is workable: how will DWR allocate water and other "benefits" to some contractors under one set of rules and to other contractors under another set of rules? Finally, we are concerned about transferring control of portions of the SWP to the contractors. Although we are not necessarily opposed to this concept, we do not think it should be done in the piecemeal fashion suggested in the Agreement, nor without a full evaluation of other possible alternatives.

6

Finally, the Monterey Agreement Draft EIR makes only cursory efforts to consider a comparatively narrow range of alternatives: litigation (which seems more like a means of achieving change rather than an alternative in itself); transfers of entitlements; increased water extraction from the Delta; construction of more water projects; and state subsidies to relieve contractors. (Pages 2-15 to 2-17.) Even these few alternatives were summarily dismissed. Additional alternatives abound, however, and many of them deserve attention. A good starting point for discussions would be consideration of the twenty options for restructuring the SWP that Dennis O'Connor explored in his California Research Bureau publication entitled "Financing the State Water Project: Options for Change."

7

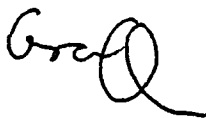
In summary, EDF concludes that the Draft EIR for the implementation of the Monterey Agreement does not adequately address crucial environmental, financial and operational issues. Nor has the Central Coast Water Authority afforded interested parties sufficient time or opportunity to formulate the in-depth review and analysis warranted by the complexity of the Monterey Agreement Principles.<sup>2</sup> We urge the signatories to the Monterey Agreement to push back the deadline for comments on the Draft EIR, to postpone the CCWA's consideration of a final EIR, and most importantly, to engage in a true consensus-based dialogue on appropriate SWP reform.

8

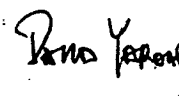
Sincerely yours,



Thomas J. Graff  
Senior Attorney



David Yardas  
Senior Analyst



<sup>2</sup>As we were finishing this letter, we received notice that the CCWA board will consider certification of the final EIR on August 24, 1995. It is, at best, highly premature for the CCWA board to consider certification of a final EIR when the drafters have not even begun to address the questions and comments raised in conjunction with this draft EIR.

# The Bay Institute *of San Francisco*

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July 20, 1995

BY FAX AND BY MAIL

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, Ca. 93427-9565

Re: Draft Environmental Impact Report on Implementation of  
the Monterey Agreement

Dear Mr. Masnada,

This letter is submitted as the comments of The Bay Institute of San Francisco on the Draft Environmental Impact Report (DEIR) on Implementation of the Monterey Agreement.

In general, we find the DEIR to be deficient in a number of areas. First, the DEIR fails to assess the impacts of implementation of all the provisions contained in the Monterey Agreement. Second, the possibility that implementation of components of the Monterey Agreement may violate state law is not considered in the DEIR. Third, alternatives to the Monterey Agreement, particularly invocation of Article 18(b) of State Water Project (SWP) water supply contracts, are not adequately identified or evaluated in the DEIR.

- 1 | These omissions and shortcomings are symptomatic of a more fundamental flaw in the DEIR's approach. Although the DEIR purports to be a program EIR, the generalized, vague nature of some of the provisions of the Monterey Agreement does not lend itself to the employment of a program EIR approach. That there is a high level of uncertainty associated with the level of implementation of various provisions of the Monterey Agreement is acknowledged at several points throughout the



DEIR itself. In fact, the Monterey Agreement proposes broad institutional, financial, structural and operational changes to the SWP but does not adequately articulate how all its provisions are to be executed. Rather than employing a program EIR approach, it is more appropriate that environmental review be performed only after each provision of the Monterey Agreement has been articulated with a high degree of specificity and memorialized in individual documents. We therefore object to the consideration or adoption of the DEIR as the appropriate environmental review for the Monterey Agreement in its entirety.

### The DEIR Fails to Evaluate All Of the Provisions of the Monterey Agreement

By failing to evaluate the impacts of implementing all of the provisions of the Monterey Agreement, and instead omitting consideration of several which have the potential to result in extremely significant environmental impacts, the DEIR fails to meet the requirements of the California Environmental Quality Act.

Implementation of Principles 2b and 12 of the Monterey Agreement are not considered in the DEIR. Principle 2b would delete Article 18(b) from SWP contracts. Principle 12 commits the Department of Water Resources (DWR) to complete the SWP. At the time the original SWP water supply contracts were drafted, the very real possibility that the SWP would not be able to provide full water deliveries, and that a state of permanent shortage would exist, was addressed by the inclusion of Article 18(b). By eliminating the ability provided by Article 18(b) to acknowledge a state of permanent shortage (more accurately expressed as realistic estimation of potential SWP yield) and reduce SWP entitlements accordingly, Principle 2b renders the reaffirmation by DWR of the long-term goal of completion of the SWP contained in Principle 12 a significant new action on the part of the SWP operators and contractors.

Completion of the SWP, and the removal of the option to reduce SWP entitlements as a result of a state of permanent shortage, implies that the full entitlement of approximately 4.2 million acre-feet (arrived at by oversubscription of the SWP) will ultimately be delivered to SWP contractors. At present, the SWP is only able to provide approximately 2 million acre-feet in water deliveries. A number of critical issues, including the source of the additional water; the method of conveyance to SWP contractors; the environmental and other impacts of these changes in SWP operation in the areas of origin, transfer and use; and compliance of the proposed project with federal and state regulations concerning water quality, endangered species, fish and wildlife uses, energy generation, and other matters; are not identified or evaluated in the DEIR.

- 2 | Implementation of Principle 13 of the Monterey Agreement is not considered in the DEIR. According to this principle, the SWP will be operated under one set of rules for contractors who participate the Agreement and under another set of rules for contractors who do not participate in the Agreement. A discussion of the implications of this differential approach for SWP operation should have been included in the DEIR.

#### Implementation of the Monterey Agreement May Violate State Law

- 3 | There are at least two areas in which implementation of the Monterey Agreement may violate state law.

First, as noted by the Planning and Conservation League (PCL) in its comments on the DEIR, approval by the State Legislature may be necessary before SWP water supply contracts can be amended for any purpose. This issue is not addressed in the DEIR.

- 4 | Second, as noted by PCL and by the Environmental Defense Fund in its comments on the DEIR, the distribution of funds to water contractors proposed in Principle 5 of the Monterey Agreement is not specifically authorized under the California Water Code (12937[b]). This issue is not addressed in the DEIR.

#### Alternatives to the Monterey Agreement Are Not Adequately Evaluated

- 5 | The very limited discussion of Program Alternatives (2-15 through 2-17) is so inadequate that it is difficult to take seriously. Alternatives to completion of the SWP, such as invocation of Article 18(b) of SWP water supply contracts (as discussed below) or a declaration by the State Legislature that the SWP is complete in its current form; alternatives to stabilization of rate structure to improve the financial viability of the SWP, including various financial restructuring options recently considered by the State Senate Agriculture and Water Resources Committee; and alternatives to increase SWP supply reliability and management flexibility, such as implementation of best management practices (BMPs) for agricultural water users, reduced generation of contaminated subsurface agricultural drainwaters in areas receiving SWP water supplies, and other measures, are simply not evaluated in the DEIR.

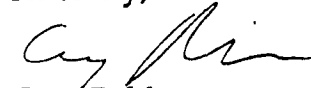
Article 18(b) of SWP Water Supply Contracts Should Be Invoked, Not Deleted

Invocation of Article 18(b) of the SWP water supply contracts has long been justified. Water supplies from the San Francisco Bay/Delta estuary and its Central Valley watershed are extremely overallocated, and SWP deliveries to meet entitlements based on estimated yield of approximately 4.2 million acre-feet can not be achieved under any conditions. In fact, the SWP has been unable to meet even its current 2 million acre-foot projected yield because the project operators do not adequately plan for natural variation in hydrological conditions and because the current level of withdrawals from the Bay/Delta system has necessitated regulatory actions in order to mitigate the SWP's impacts on endangered species. In addition, new water quality regulations recently adopted by the U.S. Environmental Protection Agency and the California State Water Resources Control Board will further reduce the availability of water for storage and export by the SWP.

Therefore, a condition of permanent shortage exists, and it is the state's responsibility to alter SWP supply contracts to reduce entitlements accordingly. This alternative – described in the original SWP water supply contracts but not even considered in the DEIR – should be implemented immediately. Failure to do so, and to instead proceed with implementation of provisions 2b and 12 of the Monterey Agreement, would cause extensive and severe adverse impacts on the aquatic environments of the Bay/Delta estuary. Conversely, reduction of SWP entitlements to acknowledge permanent shortage (or, more accurately, realistic yield) will allow for more accurate forecasting by agricultural and urban water users, and more accurate planning efforts by regulatory authorities and business interests.

Please contact me at (415) 721-7680 if you have any questions concerning these comments.

Sincerely,



Gary Bobker  
Policy Analyst

cc: interested parties

Mr. DAN MASNADA  
EXECUTIVE DIRECTOR  
CCWA  
255 INDUSTRIAL WAY  
BUELLTON, CA 93427-9565

COMMENTER 31

PHIL ASHLEY  
CANYONS & STREAMS ALLIANCE  
1586 LA CITA COURT  
SAN LUIS OBISPO, CA 93401  
805-756-2505 (WORK)  
" - 544-9741 (HOME)  
JULY 20, 1995, THURSDAY

SUBJECT: CASA'S SUPPLEMENTAL COMMENTS DURING THE PUBLIC COMMENT EXTENSION TO OUR ORIGINAL 6/23/95 COMMENTS ON THE DRAFT EIR FOR THE MONTEREY AGREEMENT.

DEAR MR. MASNADA:

AS THE SUBJECT TO THIS LETTER STATES, CASA PROVIDED YOU A COMMENT LETTER 6/23/95 ON THE SUBJECT DRAFT EIR. WE ARE NOW PROVIDING THE ATTACHED ADDITIONAL COMMENTS. CASA HAS REVIEWED THE DRAFT EIR AS WELL AS RELATED DOCUMENTS, E.G., ARTICLES 18(a), 18(b), PRINCIPLE 12, ETC.. CASA HAS ALSO REVIEWED THE CITIZENS PLANNING ASSOCIATION'S 7/11/95 COMMENT ON THE DRAFT EIR. CASA AGREES WITH THE CPA'S COMMENTS, THEREFORE, TO SIMPLIFY THE PROCESS, CASA HAS INCORPORATED ALL OF THE CPA'S COMMENTS INTO OUR OWN COMMENTS AND ATTACHED THEM (12 PAGES) HERE FOR YOUR CONVENIENCE. SINCE CASA'S PROJECT CONCERNS ARE THE SAME AS CPA'S, INCORPORATING THEIR COMMENTS INTO OUR COMMENTS SHOULD SIMPLIFY AND EXPEDITE YOUR REVIEW AND RESPONSE.

SINCERELY,  
Phil Ashley  
FOR CASA

RECEIVED

JUL 21 1995

CANADA

To: Central Coast Water Authority  
225 Industrial Way  
Buellton, CA

From: Carolee K. Krieger  
808 Romero Cyn. Rd.  
Santa Barbara, CA 93108

7/11/95

**COMMENTS ON THE DRAFT EIR  
FOR IMPLEMENTATION OF THE MONTEREY AGREEMENT**

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**SUMMARY: KEY ISSUES**

It is timely that proposed changes to the SWP contracts and to the physical structure as proposed in the Monterey Agreement be examined through the EIR process under CEQA. The SWP has been unable to meet demands based on entitlements for some time, and there is no reasonable prospect that it will be able to do so in the future. This ongoing shortage is reason for disputes which led to secret negotiations and to the subject Agreement.

The contract changes and the physical projects proposed in the Monterey Agreement involve a number of significant environmental, economic, social and other impacts which deserve and require careful and thorough analysis. Full compliance with CEQA review is not only legally necessary, it is clearly in the interest of good public policy.

The Draft EIR is seriously deficient in addressing key elements of the Monterey Agreement. In particular, it fails to even discuss (let alone meet CEQA requirements for analysis of proposed and alternative options) the most significant aspects of the agreement: 1) the elimination of Article 18(b) of the current contracts (Agreement Principle 2b), and 2) diversion and extraction of 4.2+ MAFY of water, or roughly twice the amount extracted in recent years (Agreement Principle 12).

Having initiated a major action and acknowledged the legal requirement for CEQA review, the DWR and the contractors who signed the Agreement should direct that the DEIR be rewritten in accordance with CEQA to include: 1) a complete analysis of the implications of the agreement taken as a whole (as stipulated in the Agreement itself in Principle 13), and 2) a thorough analysis of alternatives including a "no project" alternative in which the terms of existing contracts are complied with in full.

The Monterey Agreement proposes to eliminate a provision in the current contracts (18(b)) which explicitly establishes a mechanism to adjust paper entitlements to reflect actual available water in the event of a permanent shortage relative to entitlement demand. A major reason for the secret negotiations between certain contractors and DWR is the ongoing shortage and the way in which the DWR has been dealing with it. The product of those meetings, the Monterey Agreement, seeks to eliminate the 18(b) contract provision (Principle 2b) and assert that the SWP can and will be completed such that it will deliver over 4.2 MAFY of water. Such major actions in program and in physical facilities, with major and significant environmental, economic, and social impacts, require full CEQA EIR analysis. The present DEIR does not even come close.

The DEIR fails to even mention the current contract provision as an option to be examined. The DEIR fails to consider the significant question of eliminating Article 18(b) in either the "Provisions of the Monterey Agreement" on p. 1-6, or in the "Program Description" on pp. 2-1, 2-2.

Principle 12 of the Agreement asserts that the SWP should somehow deliver over 4.2 MAFY to meet full entitlement requests. This assertion that the entitlement figures are realistic and viable is the basis for major land-use planning and business planning decisions in all sectors of the economy. The DEIR has a legal requirement to examine the full implications of Principle 12, especially since it is the ultimate basis for commitments made by DWR on behalf of the people of California. The DEIR must examine and explain in detail how 4.2+ MAFY could be extracted and diverted into the system.

To do so, it should answer the following questions: Where will the water be diverted? From what hydrologic systems will it be extracted, and how will it be diverted from ecosystems and watersheds that are already over-extracted? With court rulings, congressional actions, state administrative decisions, and other policy actions consistently requiring *decreased* extractions, especially of water flowing into the Bay-Delta, how can such massive amounts of water be extracted? Where will the water be diverted and extracted? How will it be conveyed to the SWP? Will such diversions require a "delta improvement" such as a peripheral canal?

Once those obvious questions are addressed, the following direct impacts must be examined: What will be the environmental impacts of the diversions, extractions, conveyance, additional pumping (including energy demand and capacity questions), ultimate use of the water in both urban and agriculture, and the treatment or handling of wastewater? What will these actions cost, and how will they be paid for? What mitigation options are there? The DEIR does not answer any of these questions.

Instead, the DEIR appears to acknowledge that the proposed action is not feasible, noting that increased water extractions from the delta are "... not presently feasible" (DEIR p. 2-17) and that "... construction of new water projects is not a presently feasible alternative to the program." (DEIR p. 2-17) Since "completion" of the SWP *is the program*, the DEIR should state clearly that the proposed action is not feasible.

## COMMENTS

**Reason for the "Monterey Agreement": Persistent shortages of water in the SWP and resulting disputes between certain contractors and the DWR over ways to deal with the problem.**

Ongoing SWP water delivery shortages over a period of years prompted the negotiations and Agreement which is the subject of this Draft EIR. (Monterey Agreement, p.1; and DEIR pp. ES-1, 1-6) The SWP delivers water to contractors who hold "entitlements" to over 4.2 MAFY. In four of the past five years the SWP has been unable to meet entitlement water requested. (DEIR p.3-1) The stated purpose of the Agreement is to avoid litigation between certain contractors and the DWR regarding the SWP's inability to deliver. It would therefore stand to reason that the DEIR would discuss the SWP limitations and the reliability with which it can provide water in the future, especially in light of legal and physical constraints. Since the Agreement also asserts that the SWP can deliver over 4.2 MAFY in the future, it should obviously analyze how that could be done.

The DEIR fails to analyze the capability of the SWP to deliver water and the limitations on the system. A complete analysis of the system capacity in light of environmental, technical, legal, and economic constraints should be included in the study in addition to the full analysis of environmental impacts.

### **Purpose of the EIR**

According to the DEIR, the task of the document is variously to identify and analyze the potential for "ascertainable" (p. ES-1), "ascertainable and immediate" (p. ES-1), and "current, tangible, and quantifiable" (p. ES-1) environmental impacts and consequences. The document then acknowledges the CEQA requirement for analysis of potential "significant impacts on the environment" (p. 1-1). The comments presented in this review of the DEIR are based on the CEQA requirements.

The DEIR misses the two elements of the Agreement which involve the most significant environmental and economic impacts: Principles 2b and 12. Taken together (note that the Agreement stipulates that all elements must be taken together in an "integrated package" in Principle 13 (Agreement p. 8), these actions constitute a major physical and programmatic action. Both levels of impact require full EIR analysis. The DEIR, however, failed to list these actions in "The five major program components of the Monterey Agreement implementation, that *when put into operation* have the *potential* for current, tangible, and quantifiable environmental impacts." (DEIR p. ES-1)

As a Program EIR, the document fails to meet its own test as stated on page 1-2: "The Program EIR will be most helpful in dealing with subsequent activities if it deals with the

effects of the program as specifically and comprehensively as possible." By failing entirely to even acknowledge environmental, economic, and other impacts of principles 2b and 12, the DEIR is seriously deficient.

The document notes that implementation of the Monterey Agreement necessitates a Program EIR based on two criteria. (p. 1-1) Other CEQA requirements, such as Project EIRs for a number of components of the proposed actions under the Monterey Agreement, are not adequately addressed. Some are not addressed at all. While certain elements of the Agreement are program-related and clearly require CEQA review as a "program", others such as the diversion of an additional 2 MAFY of water, are clearly "projects" requiring complete CEQA review. In the present document they are inappropriately lumped under a single Program EIR with repeated reference to future analysis as a reason for the omission. While additional EIR work is undoubtedly in order for certain projects, that does not absolve the current DEIR from complete analysis of obvious elements such as doubling the extractions and diversions of water from the 2 MAFY range to 4.2+ MAFY. Such actions clearly require cumulative impacts analysis as well as specific program element analysis. This analysis is not present in the current DEIR.

#### **Proposed Action: Principle 2b and Principle 12**

(Comments on these two key principles of the Agreement and actions related to them appear together because they are directly related. The first eliminates the contractual provision which is currently in place to deal with shortages in the system by acknowledging its limitations and aligning the entitlements with the amounts of water that are actually available, the second asserts that the SWP can and will in fact deliver full entitlement volumes of 4.2+ MAFY.)

Under discussion of the three scenarios in the "proposed action" (DEIR p. 2-12 -- 2-15) there is not a single comment regarding the action of elimination of Article 18(b) and the necessity of somehow extracting significant amounts of water (on the order of two times recent extractions) to meet the terms of the agreement.

The contract provision in the existing SWP contracts which deals with conditions of ongoing shortages is Article 18. This is acknowledged and identified in the Agreement and the Draft EIR. The specific section dealing with permanent shortages is Article 18(b). Rather than invoke Article 18(b) in the current contracts, some of the contractors and the DWR have agreed that they would like to eliminate it. (Principle 2b) The environmental consequences of the options; 1) ("no program") complying with the terms of the contract between the State and the contractors and invoking Article 18(b), and 2) eliminating Article 18(b) (Principle 2b of the Agreement, p 2), asserting that the system is not permanently short of water, and seeking to somehow add over 2 MAFY of extractions to supply the SWP (Principle 12, pp. 7-8) must be thoroughly examined in the Draft EIR.



Principle 12 does *not* simply "ratify, clarify, or restate present contract terms" or state law as presented in the DEIR. (DEIR p. 1-8) The contract has explicit language (Article 18b) to deal with the present permanent shortage situation. The Draft EIR must address the content of the existing contract in consideration of Principle 12 and specifically indicate where an additional 2 MAFY will come from. It must also consider the environmental impacts of the alternative, invoking Article 18b. Instead, the DEIR excludes consideration of this key issue.

It would appear from the contract language in Article 18(b), (relating to changes required by the contract in the event of a permanent inability of the SWP to meet entitlements), that the state is *obligated* to bring the system's paper water commitments in line with real "wet" water.

Secret discussions and negotiations have been held between *certain* urban and agricultural interests, and between those interests and the state DWR, regarding this issue. An agreement has been signed and the subject Draft EIR has been prepared pursuant to CEQA requirements to implement changes to the contract including elimination of Article 18(b) of the contract and asserting that the SWP can and will be extended and "completed" such that it could extract and divert more than twice the current volumes of water it is presently capable of taking.

The DEIR should examine the option of "no program" and "project alternatives" in which Article 18(b) is invoked for the following reasons:

- 1) The 18(b) contract provision was included to deal explicitly with the possibility of the present permanent shortage situation.

Article 18(b) is included in the SWP contracts specifically to address the situation, foreseen as a possibility by the contracting parties at the time the contracts were signed and therefore included, that the SWP might not be capable of delivering full entitlement amounts. In the event of a permanent shortage, 18(b) "shall" be invoked. The language is clear; invoking 18(b) is a necessary and required action in the event that the SWP cannot deliver the water.

Both "tests" in paragraph 1 of Article 18(b) seem to be met:

*"In the event that ..."*

*"...the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield"*

*or ...*

(Note: (18(b) stipulates only "or", not "and" ):

*"... if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors: ..."*

**2) The SWP cannot deliver 4.2+ MAFY and is in a state of permanent shortage.**

The SWP cannot deliver full entitlement amounts, nor can it deliver (at least in 4 of the last 5 years) the amounts requested. (Years: 1990, 1991, 1992, 1994, Monterey Agreement DEIR p. 3-1) In fact, the amounts of water extracted and delivered by the SWP have been *decreased* due to environmental damages caused by the excessive extractions in the past and present. DWR has not provided any evidence that it can deliver more than twice its current volumes in order to meet contracted entitlement amounts.

There is no reasonable prospect of developing sufficient additional "conservation" facilities to meet entitlement figures of over 4.2 MAFY. The opposite is the case, the *existing* facilities cannot be fully utilized at capacity due to damage they and other extractions are causing to the Bay-Delta ecosystem. Thus, there is actually *less* water available for the SWP, even with existing facilities, than there has been historically.

The SWP, and other water systems impacting the Bay-Delta, have been permanently impacted by legislative decisions, court rulings, and administrative actions. All the decisions, rulings, and actions are in favor of restoring water to ecosystems to mitigate damages caused by excessive extraction at so-called "historical" levels. The most reasonable prospect for the future is for even more restrictions on water diversions from the systems which drain to the Bay-Delta, and increased flow requirements through the bay-delta ecosystem.

There have been no "preventative or remedial" measures proposed which could reasonably provide for the extraction of an additional 2+ MAFY required to deliver the full entitlement volumes of water. Thus, a "permanent shortage" based on entitlements versus ability to deliver water exists.

**3) The State DWR has a responsibility to invoke Article 18(b) of the contracts.**

DWR has a *responsibility* to invoke Article 18(b) under current conditions and to reconcile paper entitlement water with the wet variety. Actual, reliable delivery capacity in the vicinity of 20 MAFY is available to meet 4.23 MAFY (Monterey Agreement EIR figure, p.3-2) of entitlement. Thus, the entitlements are worth something less than half of their face value in real "wet" water. DWR should therefore correct the entitlement figures to reflect its real capabilities or demonstrate now how it will divert and deliver an additional 2+ MAFY.

The DEIR should analyze the following options:

- Article 18(b) of the contracts is invoked and all entitlements are adjusted to reflect actual, reliable water supplies deliverable under the contracts. (The new entitlement figures must incorporate reduced extractions resulting from recent legislative, administrative, and legal decisions. In that they may be further reduced in the future by the same processes, the new entitlement figures should be determined with careful attention to environmental constraints.)
- Provide specific plans, including cost, environmental impacts, method of payment, and specific timeline, for completion of the SWP such that it can extract and deliver the full contract volumes. In that this total entitlement figure is more than twice the amounts of water the SWP is currently delivering, and recent decisions and actions have reduced rather than increased extractions, DWR should also be directed to show the political, legal, and financial viability of its plans.

In addressing the impacts of Principles 2b and 12, the DEIR should include consideration of the following:

1. The SWP was unable to meet entitlement requests in 1994 (made in 1993). Instead, DWR "adjusted" the requests. There is no reasonable prospect of DWR being able to meet entitlement figures. Additional facilities being built (coastal branch) will increase *demand*, while supplies are actually decreasing. The Monterey Agreement Draft EIR also clarifies that additional volumes of water for the SWP are not planned in the near or even mid-term. Additional water is simply assumed to exist to meet the routine assertion that the SWP should be "finished" in the future.
2. There is no reasonable basis for water planning or public policy that would support the assertion that 4.2+ MAFY (the ultimate entitlement figure) will ever be developed.
3. The amount of water extracted from the systems flowing to the Bay-Delta will almost certainly be reduced in both wet and dry years due to past and continuing environmental damage. Other supply sources outside of the Bay-Delta system are also being reduced due to environmental damage, contractual obligations, and other reasons. (For example: Mono system diversions, Colorado River supplies, contaminated ground water in various parts of the state, etc.)
4. Thus, a permanent shortage relative to *existing and future entitlements* to the SWP exists, and there is no reasonable prospect of adding the necessary volumes of water to the system to meet the demand.

5. Environmental damage is resulting from the failure of the state to reconcile demand for water based on entitlements with actual water supplies available.
6. Proper planning at the local government level is impaired by inaccurate and unrealistic expectations placed upon the SWP to deliver water. (New demand is added through land-use decisions with expectations of deliveries of entitlement volumes of SWP water that is not really available.)
7. Significant economic impacts to agriculture are resulting from the disparity between "paper water" and actual supplies available. Farmers need to have greater certainty regarding the real supplies available. Adjusting entitlements to reflect real water would help. Transfers of water must also be based on figures reflecting real "wet" water, not paper water at a discount to face value of over 50%.
8. Business in the state is negatively impacted by the uncertainty caused by the SWP's unrealistic claims to deliver entitlement volumes of water to contractors in the future. Adjusting entitlements to reflect real water would help.
9. The integrity of bonds and debt financing in the state, both at the state level and for individual districts and communities, may be seriously and adversely impacted by the current failure of the SWP to reconcile paper water entitlements with real water supplies available.
10. Reconciling real water with paper entitlements is necessary for the development of rational water and land-use policy and business decisions. Planning by local government and the private sector must be based on an accurate representation of the SWP's ability to deliver water for which it has contracted entitlements.
11. DWR's "adjusted request" process for 1993-1994 clearly revealed the inability of the system to provide for entitlement requests. Without reconciling the entitlements with real water supplies available to the system, water contractors are unable to plan for DWR "adjustments" to their needs.
12. Harm can be diminished by aligning the contractual obligations of the state with the ability of the system to deliver water. Local planning decisions relating to SWP ability to deliver, and to the actual cost of deliveries on a per-acre-foot basis, would be improved. (If the volumes of water are half or less of entitlement figures, then the capital cost of supply systems like the coastal extension are of course double or more when stated as a per-acre-foot amount.
13. Potential liability of the state for failure to acknowledge the actual capabilities of the SWP may be avoided or reduced.

### **"No Project Alternative" and "Program Alternatives" (Sections 2.3 and 2.4)**

No discussion appears in either the "proposed action" section or in the "no project alternative" or "program alternatives" of the option of *compliance* with current contract terms. (DEIR pp. 2-12 -- 2-17) The DEIR fails to analyze, or even mention, the possibility of invoking Article 18(b), aligning the paper water entitlements with actual, reliable supplies water. This alternative needs to be fully examined. In particular, adjusting the entitlements to reflect actual, reliable supplies must be explicitly listed and analyzed as an option.

The "Program Alternatives" comment (DEIR pp. 2-15, 2-16) the DEIR lists four "major objectives" of the Monterey Agreement. The objectives listed do not reflect the language in the actual agreement. The objective of the Agreement, in its own language, it to avoid litigation and to settle disputes. (Agreement p.1) It would appear that the objectives were created in the DEIR.

The DEIR also fails to test the "objectives" in the various alternatives. For example, would the system be *more* reliable with a realistic reflection of water available for delivery in the entitlements with Article 18(b) invoked? Would rates be *more* stable with adjusted entitlements? Would the rates and the reliability factors actually be less stable with an even 50/50 split in reductions as proposed in the Agreement? Is "reliability" and rate "stability" actually enhanced by a simple assertion (and absolutely no analysis) that the SWP will be completed? All of these questions merit detailed analysis in the DEIR.

### **Statewide Assessment**

This section (DEIR p. 3-1) claims to describe the "potential environmental consequences associated with implementation of program alternatives..." at the state and regional levels.

The DEIR acknowledges that the SWP has failed to deliver water to its contractors "in the amounts requested" in four of the last five years, and it further notes that the project yield is *decreasing*. (DEIR p. 3-1) No connection is made between these key points and the unsubstantiated assertion that the SWP can somehow deliver something on the order of twice as much water.

Amazingly, the DEIR then claims "No significant environmental impacts on the Sacramento-San Joaquin Delta or other SWP water sources are anticipated as a result of implementation of the Monterey Agreement." (DEIR p. 3-2) The DEIR goes on to discount impacts to groundwater, water quality, air quality, biological resources, and land use without any analysis of the implications of full implementation of the terms of the Agreement.

The DEIR is seriously inadequate without a full analysis of the statewide impacts resulting from implementation of this Agreement as an "integrated package" per principle 13 of the Agreement. Either the Agreement is analyzed in full, as such a package, with the obvious problems of Principles 2b and 12 included, or the DEIR should be considered far short of CEQA compliance.

The "statewide assessment" section concludes with the astonishing notion that "In the absence of significant adverse impacts in both economics and population, mitigation measures are not called for." (p. 3-26) The cost of "completion" of the SWP such that it could extract and deliver 4.2+ MAFY would arguably be significant. The DEIR should take another look at this issue.

### **Cumulative Impacts**

The DEIR concludes with a statement that the Monterey Agreement is "speculative" in nature and thus that the cumulative impacts are speculative. It then draws the further conclusion that this somehow absolves the DEIR of properly analyzing the environmental and other impacts as required under CEQA, and it limits the analysis to certain portions of the Agreement, notable excluding Principles 2b and 12. (DEIR p. 6-1) No comment appears regarding the two items.

Again, the DEIR is seriously deficient in studying the cumulative impacts. It fails to even list them, let alone deal properly with EIR requirements.

### **Principle 1:**

This action has potentially major impact on urban contractors. What would have been the deliveries to the urban contractors if agriculture had not taken the cuts first in the years of the last drought? What would this have meant for delivery amounts? Reliability to the urban contractors is *clearly reduced* under the proposed action, even with the prospect of buying the water back from agricultural sellers.

Reliability of supply is directly connected to land-use decisions. With the present capabilities of the SWP, it would appear that urban contractors can count on *reliable* deliveries in the range of 1/3 to 1/2 of "face value" of the contract entitlements. This reliable percentage number should be the basis for land-use decisions. This is not presently the case. The DEIR must address this issue.

The Draft EIR should clearly identify reliable service levels under drought conditions at least as serious as the recent historical levels under the proposed system and under the current system, and those amounts of water should be the basis of water supply planning and land-use decisions.

## **Additional Comments and Questions on the Draft EIR**

1. What is the basis for the 45,000 AF figure in Principle 3, and what is the mechanism and legal process for "retiring" entitlements? (DEIR p. 1-6) Why not "retire" additional entitlements?
2. What is the specific basis for determining volumes of water to be classified as "interruptible" and made available at the cost of pumping? Principle 7 states in part: water "not needed for fulfilling entitlement delivery requests or meeting the project operational commitments, including storage goals for the current or following years ..." Does this imply that there will be no interruptible supplies available until all storage systems are full? If so, which storage systems are included and what criteria will be employed to make that determination? (Agreement p.5)
3. What are the sources of non-project water that are envisioned? (Agreement p.5)
4. How can some of the contracts be changed in accordance with this agreement and not others? Is this agreement to be forced on all contractors? The DEIR states that "any and all Contractors may participate in the rights and obligations of any contract amendments approved consistent with the Monterey Agreement." (DEIR p. 1-2) How could the provisions of Article 18(b) be invoked for some and not all parties?
5. Have public hearings in the various areas of the state impacted by this program/project been scheduled? If not, why not?
6. Is the financial integrity of the SWP in question? (Principle 5)
7. Will agricultural contractors purchase water under the new Agreement terms at a lower rate than they sell it to urban contractors under the transfer provisions? If so, what is the rationale for agriculture enjoying a profit on the water purchased and resold to urban contractors when the urban contractors presently have the right to purchase the water with priority over agriculture?
8. The "program alternative" listed under 2.4.1 (DEIR p. 2-16) addresses litigation as an alternative. It should be noted that there is no information provided that litigation would be precluded in any way under the new agreement. Nor is there any argument or information suggesting that litigation would be *less desirable* than the proposed agreement. Clearly those who negotiated in secret came to an agreement they feel is better than litigation. It is not at all clear that the people of California would not be better off with the issues and options handled in the courts.
9. Water use in California is by law supposed to be based on criteria of reasonable and beneficial use. Recent court and administrative rulings have affirmed this basis for water rights. The Monterey Agreement and the DEIR fails to adequately deal with

this criteria. For example, no analysis is provided of the implementation of so-called "best management practices" (BMPs) in either the urban or agricultural sectors. The BMP concept was developed to establish a basis for reasonable and beneficial use. The SWP contracts should explicitly require *implementation* of BMPs in the urban sector (where they have been developed and implemented by some contractors) and in the agricultural sector (where they have not even been developed).





COMMENTER 32

Natural Resources  
Defense Council

71 Stevenson Street  
San Francisco, CA 94105  
415 777-0220  
Fax 415 495-5996

Via Facsimile and First Class Mail

July 21, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

Re: Draft Environmental Impact Report on Implementation of the Monterey Agreement

Dear Mr. Masnada:

The Natural Resources Defense Council (NRDC) would like to offer the following comments on the Draft Environmental Impact Report on Implementation of the Monterey Agreement. We agree with the statements by the Environmental Defense Fund and the Bay Institute that the DEIR has the following inadequacies:

- The DEIR does not address or inadequately addresses the impacts of a number of the key provisions of the Monterey Agreement, especially Principle 2(b) which deletes Article 18(b) from SWP contracts and Principle 12 which commits the Department of Water Resources to complete the SWP. 1
- The DEIR does not adequately consider alternatives to key provisions of the Agreement, especially with regard to Principle 2(b) and Principle 12. 2
- Implementation of the Monterey Agreement may violate state law in several respects. First amending SWP water supply contracts as envisioned by the Agreement may require approval by the State Legislature. Second, distributing funds to water contractors as proposed in Principle 5 of the Agreement is not specifically authorized under the California Water Code. 3

These concerns are described more fully in the comments of the Environmental Defense Fund and the Bay Institute. Thank you for considering our comments.

Sincerely,

Ronnie Ann Weiner  
Resource Specialist

cc: David Yardas, Thomas Graff, EDF  
Gary Bobker, The Bay Institute

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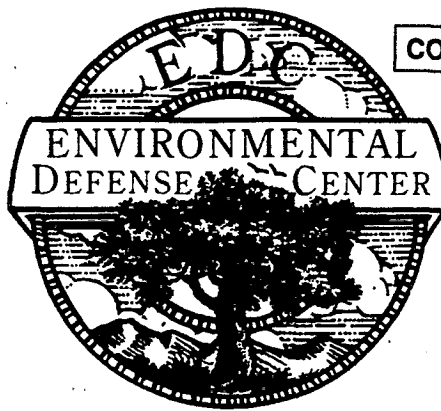
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Fax 202 783-5917

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Los Angeles, CA 90048  
213 934-6900  
Fax 213 934-1210

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COMMENTER 33

July 21, 1995

Dan Masnada, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, CA 93427-9565

BY MAIL AND FAX  
(805) 686-4700

RE: Monterey Agreement Draft EIR

Dear Mr. Masnada:

Please accept the following comments regarding the Monterey Agreement Draft EIR.

**Lead Agency Status**

- 1 | We reiterate the concerns raised during scoping regarding CCWA's lead agency status. Moreover, we repeat what was explicit in our scoping comments: that it is irrelevant that CCWA was designated lead agency for the Monterey Agreement EIR if CCWA does not meet CEQA's criteria for lead agency status. CCWA does not meet these criteria because it is not responsible for the "whole of the action" of implementing the Monterey Agreement. The Department of Water Resources, the proper lead agency for this project, cannot contractually delegate lead agency status to an agency that does not meet the CEQA criteria. It is unfortunate that the lead agency issue was not resolved earlier in the environmental review process prior to the commitment of considerable resources by CCWA and its consultant. This commitment, however, does not remedy the failure to observe the requirements of CEQA with respect to lead agency status. A copy of EDC's March 13, 1995 scoping comment letter is attached and incorporated by reference in these comments.

**Statement of Purpose and Need**

- 2 | The Draft EIR states at p. 1-2 that the Monterey Agreement "will settle [the Contractors' and DWR's] disputes over allocations of SWP water and certain operational aspects of the SWP." This statement, however, is not self-explanatory. While the purpose and need statement further states that the DWR and the Contractors entered into mediated negotiations that culminated in the Monterey Agreement "to avoid litigation, and to make the SWP operate more effectively and efficiently for all Contractors" (p. 1-6), the EIR fails to indicate why implementation of the Monterey Agreement is preferable to litigation or to certain measures available in the status quo. The EIR must provide a complete discussion of purpose and need for the proposed project. This discussion must contain more than the naked assertion that the parties to the Monterey Agreement found it convenient or advantageous to adopt the Statement of Principles. At a minimum, it should provide some of the historical and political background to the perceived need for the Monterey Agreement.

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### No Project Alternative

The No Project Alternative discussion must be expanded considerably to include measures that could be implemented under existing contracts that may address some or all of the project objectives. In particular, Article 18(b) of existing SWP contracts, which would be eliminated by implementation of the Monterey Agreement, provides a means of addressing the water allocation concerns that prompted the Monterey Agreement.

3

DWR has a non-discretionary duty to invoke Article 18(b) if (1) "the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield" or (2) "if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventive or remedial measures taken by or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors." Either or both of the conditions that require the DWR to invoke Article 18(b) currently exist. Under current economic, political, and environmental circumstances, there is no prospect or expectation that the SWP can deliver anywhere near the total project entitlement. Article 18(b) mandates that DWR reduce all entitlements proportionately. The EIR incorrectly states that under the No-Project Alternative no changes in SWP water allocation will occur. Since changes in SWP water allocation must occur if Article 18(b)'s alternative criteria are satisfied, the EIR must be revised to include the implementation of Article 18(b) as part of the analytical baseline for the Monterey Agreement.

### Program Alternatives

Even if Article 18(b) is arguably not part of the No Project Alternative, its implementation should be considered as a program alternative. Thus, the EIR should include alternatives that meet some or all of the water allocation objectives of the Monterey Agreement through a proportionate reduction in project entitlement or some other mechanism that reduces entitlements to reflect actual SWP yield more accurately.

4

### Land Use Planning Based on Entitlement

While Principles 1 and 2 differ from past allocation practices, they nonetheless retain the feature that total project entitlement far exceeds the SWP's long-term yield. This feature, which exists both in the proposed program and in the status quo, is not without environmental consequences. Potential environmental effects exist because local land use jurisdictions within SWP Contractors' service areas vary considerably in their planning responses to the availability of project water. Some planning jurisdictions assume that most or all of their SWP entitlement will be available for new development. Others more reasonably assume that they will receive water in proportion to the project's actual yield. Thus, where land use planning determinations can be made on the basis of entitlement rather than real water, development can outpace the availability of water, leading to detrimental environmental consequences, excessive groundwater pumping, and pressure to develop additional water supplies.

5

While the proposed program alters the manner in which SWP water is allocated, particularly in times of shortage, it does not reduce entitlements to reflect actual water availability. Moreover, the EIR provides no discussion of the environmental consequences associated with land use planning based on project entitlement rather than actual yield. It is true that these detrimental environmental effects are occurring under

33-2

- 5 | the status quo. These effects are not part of the environmental baseline, however, because the status quo/No Project Alternative provides a built-in mitigation measure in the form of Article 18(b), discussed above. As the proposed program specifically amends SWP contracts to delete Article 18(b), the EIR must discuss these potential environmental consequences and include specific mitigation measures and program alternatives to avoid these consequences or reduce them to insignificance.
- 6 | The implementation of the Monterey Agreement is an ambitious program with far-reaching consequences that include direct effects, indirect effects, and opportunity costs of foregone alternatives. Some of the potential effects can reasonably be analyzed in future environmental documentation. The land use planning issue described above, however, is an example of an indirect effect of implementing the program that is predictable, reasonably quantifiable, and likely to elude future environmental review other than on an ad hoc basis. The Monterey Agreement significantly changes the manner in which SWP water is allocated, while eliminating the contractual provision dealing with permanent shortage that might best mitigate such indirect effects. The scope and importance of this change alone warrants a serious and detailed analysis. Moreover, the EIR provides not only the best and perhaps only opportunity to confront the land use and other indirect consequences associated with the SWP; CEQA obligates the lead agency to consider these effects. Unfortunately, the EIR is utterly devoid of any meaningful attempt to fulfill this obligation. The EIR should be entirely reconceived as a comprehensive analytical document commensurate with the ambitious scope of the Monterey Agreement.

#### **Completion of the State Water Project**

- 7 | Principle 12 reaffirms DWR's obligation to complete the SWP. Table 1.7-1 indicates that this principle has no potential for environmental impacts but merely ratifies, clarifies, or restates existing contract terms. This reassurance notwithstanding, the issue of completion of the SWP is fraught with considerable public controversy. More importantly for the purposes of the EIR, CEQA indicates that the environmental consequences of Principle 12 must be analyzed and that mitigation measures and program alternatives be proposed where appropriate.

The obligation to provide this analysis arises because the commitment to complete the SWP is not merely part of the environmental baseline. The EIR indicates that one of the objectives of the Monterey Agreement is the completion of the SWP (p. 2-15). The EIR further indicates that completion of the project is infeasible under current circumstances. Thus, a renewed commitment to completion of the project, coupled with completion of the SWP as an objective of the program, is not a continuation of the status quo; it is a significant departure from the status quo that requires full environmental documentation.

#### **Litigation Alternative**

- 8 | The EIR provides a brief discussion of the possibility that certain Contractors may resort to litigation as an alternative to implementation of the Monterey Agreement. While it is indeed impossible to predict the outcome of such litigation, the EIR should provide enough information regarding the litigation alternative to allow comparison with the proposed program. The EIR should thus indicate whether the proposed program is superior to a range of possible litigation outcomes. The second paragraph in this section (p. 2-16) should also be considerably expanded to describe in greater detail the

Agricultural and Urban Contractors' issues regarding allocation. The EIR should discuss how these respective Contractors' interpretations relate to and differ from the allocation principles contained in the proposed program. Finally, the EIR should include a modelling under various circumstances based on these respective interpretations similar to that included for the proposed program. For example, if DWR determined that the Agricultural Contractors' interpretation of the SWP contracts' shortage provisions was correct, what future allocations would be likely over a reasonable range of hydrological and transfer conditions?

8

### **Secondary Effects of Cropland Reduction and Idling**

The EIR analyzes potential effects associated with the retirement of 45,000 acre feet of agricultural entitlement and the transfer of 130,000 acre feet of agricultural entitlement (pp. 3-19 to 3-21). While the acreage involved is a small percentage of total irrigated acreage in the affected regions, the EIR must also discuss secondary effects associated with cropland reduction and idling, including increased potential for urbanization, air quality impacts due to increased particulates, and loss of return flows. The EIR's cursory analysis of these effects should be expanded beyond a mere statistical approach, which tends to minimize these local but potentially significant effects.

9

### **Transfer of 130,000 Acre Feet of Agricultural Entitlement**

Principle 4 of the Monterey Agreement seeks to institutionalize agricultural-urban transfers of SWP water on a large scale. Like the attempt to change the manner in which SWP water is allocated to Contractors, Principle 4 is an ambitious proposal that resonates with potential environmental consequences. Like the allocation principles, the indirect effects of Principle 4 receive only cursory and abstract analysis in the EIR. The transfer issue is admittedly complex. Its very complexity, however, together with the fundamental importance of institutionalizing the water transfer, suggests that the issue should receive more comprehensive consideration in the EIR. In particular, the discussion of the proposed program's growth-inducing potential and attendant environmental effects must be expanded. For example, the EIR dismissively concludes that, while the removal of water as a constraint to growth could contribute to population growth, there are relatively few communities where water is the sole constraint to growth (p. 3-23). The growth inducement issue, however, deserves a more sophisticated analysis. It is unquestionable that the availability of water is not the sole constraint on growth in most communities. This fact should not end the analysis. It does not follow that the availability of more water through the transfer provision will not have a significant growth inducing potential that must be considered pursuant to CEQA. In some communities, water may be the sole constraint on growth. In others, it may be the sine qua non for growth, despite the existence of other constraints. In still other communities, water may function in a complex or synergistic fashion with a host of other constraints. The complexity of the situation does not relieve the lead agency of its responsibility to confront these potential effects and to adopt feasible mitigation measures and propose alternatives.

10

The EIR's overly statistical and abstract approach further distorts the proposed program's growth inducing potential. Thus, the EIR concludes that, at varying demand levels, the number of persons that may be supported by the water transfers ranges from 1.6 percent to 0.1 percent of the state's population. The EIR concludes that, because "[i]t is highly probable that the additional water would be delivered to multiple agencies located within

33-4

- 10 both regions," the potential growth inducing impacts are not considered significant (3-26). Arguably, however, even a 0.1 percent population increase distributed uniformly throughout the state is significant. Moreover, while it is likely that additional water would be delivered to multiple agencies in urban regions throughout the state, certain urban Contractors' service areas are more susceptible to growth than others. The EIR should make some attempt to treat regional growth associated with the water transfers, which may be less than significant from a statewide perspective, more comprehensively.

### Conclusion

The Monterey Agreement includes elements that, to varying degrees, are ambitious, praiseworthy, problematic, far-reaching, and of vital importance to the quality of life in California during the coming decades. This program deserves a comprehensive and environmental review that can enable the public and the appropriate decisionmakers to determine whether the program should be implemented. The EIR should "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project" (Pub. Res. Code § 21061.) The Monterey Agreement EIR does not meet this minimal informational threshold.

Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact this office.

Sincerely,



John T. Buse  
Staff Attorney  
Environmental Defense Center

cc: David Kennedy, Director DWR  
Susan Weber, Chief Counsel DWR  
Susan Petrovich, Hatch and Parent

Attachment (mail only)

## 5.0 RESPONSES TO PUBLIC COMMENTS

Following are responses to public comments included in section 4.0 of the FEIR. The responses are numbered sequentially within each communication received from the Commenters. A number of Commenters have raised what are essentially identical comments and, thus, in the interests of brevity a comprehensive response to these comments has been prepared. These specific comments tend to address economic, legal or institutional issues rather than environmental impacts. This integrated, global response is presented immediately following.

### GLOBAL RESPONSE TO LEGAL AND INSTITUTIONAL COMMENTS

A number of comments have been received which are primarily related to economics, legal issues, or interpretations of the water supply contracts. While such comments are often beyond the scope of matters considered in an EIR prepared under CEQA, the following information is being provided in an effort to clarify how the proposed project would affect the SWP water supply contracts and the State laws cited by Commenters.

#### Section 1: Monterey Agreement Principle 2

Area of Origin. Concern has been expressed that the implementation of Principle 2, through amendment of Article 18(b) of the water supply contracts, could impact the rights of area of origin users to supplies of water to which they are currently entitled.

The concern expresses a fundamental misunderstanding of the proposal and the manner in which the State area of origin laws operate. The proposal analyzed in the DEIR is to amend Article 18(b) of the water supply contract, the article which allows the Department to reduce entitlements among the contractors proportionately when the State is unable to prevent a long-term reduction in project yield. This provision was originally included in Article 18 because of the "agriculture first" shortage provisions contained in article 18(a). Since the Monterey Agreement includes removal of the agriculture first shortage provisions from the water service contracts (pursuant to Principle 1), Article 18(b) is no longer necessary. Its deletion, however, does not affect either the inchoate rights of area of origin water users to enter into contracts with the Department for water from the SWP or the priority of those rights if a contract is executed.

On a fundamental level, the contract amendment could not adversely affect area of origin rights. Those rights are established by statute. The "Watershed of Origin Law," Water Code sections 11460 - 11463, is part of the California Central Valley Project Act. It is expressly referenced in the Burns - Porter Act which authorized the general obligation bonds for the SWP (Water Code section 12931). The SWP is expressly subject to the Watershed of Origin Law, and contract amendments cannot change these statutes. The Department has expressly acknowledged many times that the project is subject to the area of origin laws and that the Department will comply with those legal requirements.

There is a reference in Article 18(b) to the area of origin laws which states that the proportional reductions described therein shall not apply to "such entitlements as may reflect established rights under the area of origin statutes." It is perhaps the fact that this provision will be

eliminated from the water supply contracts that led some to conclude that area of origin rights could be impacted. This, however, is not the case.

The area of origin laws allow local interests to develop new water supplies in the area with a priority above the SWP, even if this decreases the water yield of the project. Article 18(c) authorizes the Department to enter into a contract with an area of origin water user who has established a prior right to water under applicable California law. The amendment of Article 18(b) will not affect area of origin users' rights to develop new water supplies or their ability to seek a water supply contract from the Department in the future. To date, however, no area of origin water user has sought to obtain water from the SWP.

The amendment will include no change to Article 18(c). This article specifically deals with how permanent shortages caused by area of origin water service contracts will be allocated among the other contractors. This provision protects the rights of area of origin users who contract for project water by declaring that such a contract will be treated as a cause of a permanent shortage for all other SWP contractors.

If an area of origin water user does contract for SWP water in the future, the deletion of Article 18(b) will not affect the priority of the area of origin contractor vis-à-vis other contractors. After the deletion of Article 18(b), Article 18(a) will govern the allocation of shortages in SWP supplies, other than those covered by existing Article 18(c). Article 18(a), after describing the way shortages will be apportioned, states:

The foregoing provisions of this subdivision shall be inoperative to the extent that a contractor's annual entitlement for the respective year reflects established rights under the area of origin statutes precluding a reduction in deliveries to such contractors.

This sentence will be retained in amended article 18(a), so the area of origin contractors' rights under the water supply contracts in water short years would remain unchanged.

Because implementation of the Monterey Agreement will not take water away from users in the area of origin, impact their ability to obtain a water service contract, or affect the priority of their contracts, when obtained, there is no basis for the concern that implementation of the Monterey Agreement would cause a greater consumption of energy, increases in losses to evaporation, or increased losses through seepage into unusable groundwater. The decision to serve people where they live and agricultural lands in the San Joaquin Valley was made through a vote of the people in 1960 by approving the SWP. That decision was made recognizing that there would be energy costs associated with distribution of the water and that there would be evaporation losses in the area where the water is used.

The basic decisions made in 1960 are not being altered by the Monterey Agreement. One of those decisions not being altered was to make the SWP subject to the area of origin laws allowing people in those areas to purchase water in the future when they need the water for their economic development.

Article 18 as an Alternative. Various Commenters have suggested that the implementation of Article 18(b) of the water supply contracts constitutes a feasible alternative to the Monterey Agreement, which should be considered in the EIR. These comments misinterpret the overall



purposes of the Monterey Agreement and the effects of attempting to implement Article 18(b) in lieu of implementing the Agreement. Implementation of Article 18(b) was found not to be a feasible alternative.

Article 18(b) must be analyzed in conjunction with other provisions of the water supply contracts. Its key provisions state:

In the event that the State is unable to construct sufficient additional facilities to prevent a reduction in the minimum project yield, or if for any reason there is a reduction in the minimum project yield, or if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors:

- (1) The annual entitlements and the maximum annual entitlements of all contractors, except to the extent such entitlements may reflect rights under the area of origin statutes, shall, by amendment of Table A of this contract, be reduced proportionately by the State to the extent necessary so that the sum of the revised maximum annual entitlements of all contractors will then equal such reduced minimum project yield . . .

This provision is closely linked with Articles 6(c), 16(b), 18(d) and 21 of the water supply contracts. Article 6(c) requires the State, subject to the availability of funds, to make all reasonable efforts, consistent with certain prerequisites, to complete the project facilities in such a manner that the contractors' Table A entitlements can be provided. Article 16(b) requires the State to make all reasonable efforts to perfect and protect water rights necessary to protect water supply commitments. These obligations would not be terminated or modified if the State declared a permanent shortage under Article 18(b). This is made clear by Article 18(d) which allows reinstatement of reductions that occur in Table A entitlements under Article 18(b). Thus, implementation of Article 18(b) would not eliminate the possibility that, in the future, the State would construct additional facilities or take other actions to increase the yield of the project.

In addition, implementation of Article 18(b) would not reduce the amount of water which the State would have available from storage or from natural flows through the Sacramento-San Joaquin Delta to deliver to the contractors. The amount of water available is not dependent on the Table A entitlements, but on natural hydrologic variations and the capacities of the existing project facilities. If Table A entitlements were adjusted, less entitlement water would be delivered and more surplus water would be available pursuant to Article 21. The total amount of water available to all contractors would remain essentially unchanged.

Because of the continuing existence of Articles 6(c), 18(d), and 21, declaring a permanent shortage under Article 18(b) would not have the water supply or future project construction results postulated by several Commenters.

The signatories to the Monterey Agreement further recognized that declaring a permanent shortage under Article 18(b) would not accomplish one of the primary purposes of the Monterey Agreement, i.e., the avoidance of protracted litigation among the contractors. There are a number of outstanding disputes: do the preconditions for triggering Article 18(b) exist; what is the minimum project yield and the existing yield; and whether surplus water would

thereafter go first to make up for previously unfulfilled entitlement or as surplus water under the water supply contracts which, pursuant to Article 21, gives priority to agriculture and groundwater uses.

In addition the alternative of implementing Article 18(b) would not allow other benefits of the Monterey Agreement to be realized. It would not provide for the financial restructuring which is designed to make the project more economically sound; it would not facilitate the water transfers contemplated by the Agreement; and would not allow for the coordinated use of facilities, all things that should permit more efficient use of existing supplies and could, thereby, reduce the need for more project facilities.

In summary, in consideration of the factors described above, triggering Article 18(b) of the water supply contract was determined not to be feasible alternative. In addition, contrary to the beliefs indicated by some of the comments in this area, declaring a permanent shortage would not alter the responsibility of the Department to act under Article 6(c) to attempt to develop additional minimum project yield and restore entitlements under Article 18(d).

## **Section 2: Monterey Agreement Principle 7**

A comment suggests that creating the new category of "interruptible water" would amount to a subsidized use of water and would lead to increased irrigation of marginal lands. This comment indicates a misunderstanding of the existing water supply contracts and largely raises an economic issue outside the scope of the DEIR.

As stated in Principle 7, the interruptible water program will replace three existing categories of water under the current SWP contracts: (1) surplus water, including scheduled and unscheduled surplus, (2) Article 12(d), or make-up water, and (3) wet weather water.

Surplus water under the contracts is water available in excess of SWP scheduled entitlement deliveries and operational storage requirements. This water has been made available in the past on a scheduled basis, largely during the years when contractor demands were low and were building to their current levels. It has also been made available on an unscheduled, interruptible basis when storms or high runoff conditions provided extra flows in the Delta for generally short periods. Interruptible deliveries may be available in a year when there is a shortage in entitlement deliveries, such as occurred in 1994, or in a year when all entitlement requests are being met. The interruptible water program is essentially a continuation of this existing unscheduled surplus water program.

The interruptible water program will also replace Article 12(d), the provision in which the Department, in years following a shortage in entitlement deliveries, is to make up that shortage. This make-up water is to be delivered in addition to entitlement in the year it is delivered. Water delivery shortages during the recent drought years have resulted in large balances of make-up water "owed" to the contractors. These balances will be eliminated when the interruptible water program replaces Article 12(d). Also replaced will be the provision for wet weather water, which is a provision for certain contractors in which water is made available to them after years in which local conditions in their respective service areas are so wet that their ability to take their entitlement water is limited. Any existing balances for wet weather water

deliveries will also be eliminated when the interruptible water program replaces the wet weather program.

The interruptible water program will not result in the delivery of any additional water to SWP contractors beyond that presently provided under the existing programs in the contracts.

The portion of the comment concerning subsidies also indicates a misunderstanding of how SWP contractors are charged for use of facilities. The contractors pay the annual fixed costs of developing, storing, and delivering water irrespective of how much water they receive in any particular year. All State Water Project capital costs are recovered through annual charges to the contractors over the life of the project. Capital costs are charged for conservation facilities on the basis of contractor entitlements, and for transportation facilities on the combined bases of contractor entitlements and aqueduct capacity allocated for deliveries to each contractor. The operation and maintenance costs that do not vary with the quantity of water delivered in a given year are likewise fully recovered each year. In addition to these fixed costs, the contractors also pay those annual costs that vary with the amount of water delivered, such as power and increased operation and maintenance costs. These variable costs are determined based on the amount of water delivered, regardless of whether that water is scheduled entitlement or interruptible water. Therefore, all fixed and variable costs for State Water Project facilities and water delivered are fully recovered by the Department.

Finally, the Department's experience has shown that the existing unscheduled surplus water program does not involve deliveries of water of sufficient quantity or reliability to lead to an increase in irrigation of marginal lands as suggested by the comment. The interruptible water program is essentially a continuation of this existing program and will only be available on a periodic basis when extra flows available in the Delta allow additional diversions for unscheduled deliveries to contractors. These interruptible deliveries may be available in a year when there is a shortage in entitlement deliveries, in which case it would be used on lands already in production, or in a year when all entitlement requests are being met. In this latter case, the flows are not predictable enough for growers to make long-term investments for use of the water, or for bankers to make loans to growers based on use of those waters. In addition, the new interruptible water is likely to be less reliable for agriculture than the existing programs, because under Article 21 agriculture has a priority right to surplus water. Under the Monterey Agreement, this priority would not exist. The interruptible water is highly useful, however, for pre-irrigation and supplemental irrigation of existing crops and for groundwater recharge. Accordingly, the interruptible water program is unlikely to make it economically attractive or practical to bring marginal agricultural lands into production.

### **Section 3: Monterey Agreement Principle 8**

One comment has suggested that Principle 8, in creating a right to transport non-project water in SWP facilities, will add to other subsidies that will encourage water use in the service areas of the water contractors as opposed to use in other areas. This comment fails to recognize that the principle is primarily a restatement of what is expressly provided by California statutes.

Water Code section 1810 already creates a right for entities to have non-project water transported in SWP facilities to the extent there is capacity available and the entity pays the fair compensation for the transportation service. That code section also declares:

- (a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

Principle 8, with its recognition of deliveries of non-project water, restates existing statutory rights and is unlikely to cause diversions of water from uses in some parts of the State to other parts in a manner that presently could not occur. No specific non-project water sources are currently identified. All future projects would be subject to CEQA analysis.

Further, area of origin users will not be adversely impacted by this right to transfer non-project water. Area of origin users who develop a need for water and who contract with the Department for their necessary supplies, would, to the extent necessary to meet their contractual requirements, have a right to use conveyance facilities the same as any other contractor, which right would have priority over the right to move non-project water.

With respect to subsidies, as noted in the discussion of Principle 7, all contractors pay their full annual capital and fixed operation and maintenance charges based on their entitlements even in years when only partial contract entitlements are allocated. The contractors also pay all costs associated with the development and acquisition of project power. Payment of the variable cost only for interruptible and non-project water does not subsidize the contractors or impair the repayment plan for the State Water Project.

If individual contractors enter into future agreements for transfers of non-project water to their areas, they must comply with CEQA. The specific impacts of those possible transfers cannot be foreseen at this time and are too speculative for analysis. The potential environmental impacts of future water transfers are discussed in this EIR generally and to the extent they can be foreseen.

#### Section 4: Monterey Agreement Principle 12

Several comments have suggested that Principle 12 creates a new obligation for the Department to complete construction of the State Water Project. This is not the case. Under Principle 12, the Department of Water Resources reaffirms a pre-existing contractual obligation under Article 6(c) of the water supply contracts:

... subject to the availability of funds, to make all reasonable efforts consistent with sound fiscal policies and proper operating procedures to complete the project facilities and other water management programs necessary for delivery of project water to the Contractors in the total amounts designated in each contract's Table A.

Table 1.7-1 (Cross Tabulation of Monterey Agreement Principles by Environmental Consequence Category) identifies this Principle as having "No potential for environmental impacts, but ratify, clarify or restate present contract terms or state law . . ."

After consideration of the comments made, this identification is reaffirmed for the following reasons:

1. The Principle simply restates the substance of existing contract provisions which have been in effect since the first state water contracts were executed in 1960, which, it should be noted, predated enactment of the California Environmental Quality Act. This reaffirmation does not have any effect on the Department's obligations under the California Environmental Quality Act, and other pertinent laws, in exercising reasonable efforts to provide project water. It is merely intended to make clear that such obligations to exercise reasonable efforts are unchanged by the Monterey Agreement.
2. The Principle includes language which is broader than Article 6(c). The Principle refers to water management programs as being necessary in conjunction with completion of project facilities; this language merely recognizes pre-existing contract language authorizing the Department to engage in activities such as water purchases (Articles 1[h][2][D] and 22[i]); groundwater storage facilities (Article 1[h][2][B]); waste water reclamation facilities (Article 1[h][2][C]) and future water conservation programs and facilities to reduce demands (Article 1[h][2][E]).
3. Principle 12 does not alter the Department of Water Resources' obligations under the water supply contracts to complete the State Water Project, nor does it commit the Department to expend resources towards completing the Project. Its adoption causes absolutely no change in obligations which pre-date the Monterey Agreement by thirty-five years. Principle 12 does not expedite or commit the Department to any particular future course of action in this regard. Thus, any attempted environmental analysis of projects the Department might or might not undertake would be entirely speculative and non-productive.

#### **Section 5: Procedure for Amending Water Service Contracts**

Though stated in the form of a question, one Commenter seems to assert that the current water supply contracts can be amended only with approval of the Legislature and that the Principles are at variance with the original Legislative approval.

As a general matter, section 12937(b) of the Water Code delegates to the Director of Water Resources the authority to enter into contracts for water, power, or other services from the project. The key sentence provides:

The department, subject to such terms and conditions as may be prescribed by the Legislature, shall enter into contracts for the sale, delivery or use of water or power, or for other services and facilities, made available by the State Water Resources Development System with public or private corporations, entities, or individuals.

As can be seen, this language, which was approved by the voters, authorized the legislature to "prescribe" terms which the Department would then be required to include in its water supply contracts. However, the Legislature did not take any action to prescribe specific terms for the contracts. The prototype contract with The Metropolitan Water District of Southern California was submitted to the Legislature for oversight, and hearings were held to review its terms. The contract as shown to the Legislature granted the Department and the respective contractors the authority to make future changes in their respective agreements. Once again, the Legislature took no action. Thus, contract amendments do not require approval by the Legislature. In fact

none of the many contract amendments going back to 1964 have needed or been given Legislative approval.

Specifically, changes in the contract implementing principles such as Principle 5 (Restructuring to ensure financial integrity of the SWP) have no direct or indirect ascertainable environmental impact, but have the potential for economic impacts. As such they are not subject to the CEQA. However, the following observations are made in response to the comment that the contract changes redirecting revenues would need to be approved by the Legislature.

The Monterey Agreement would be implemented by a contract amendment that would require the Department to estimate the revenue needs of the SWP for the following year. These revenue needs would include all costs for operation and maintenance, payment of principal and interest on bonds, and payments of any other amounts owed by the project. When the projected receipts from the water contracts would exceed those revenue needs, the Department would reduce the charges to the contractors for the following year by the estimated amount of the excess revenue. The reductions are scheduled to begin in the year following the repayment of the loan to the project from the California Water Fund.

This approach is consistent with the requirements of Water Code section 12937(b). All revenue maintenance requirements will be met and the contractors will continue to meet their fiscal responsibilities towards the SWP. In this regard, it should be noted that one of the terms prescribed by the Legislature is to the effect "that the income and revenues derived from such contracts are pledged to the purposes and in the priority herein set forth." (Water Code Section 12937(b)) The Legislature has further prescribed that charges billed by the Department are to be sufficient to return the costs of operation and maintenance and to pay off SWP bonds with interest (Water Code Section 11455). The Monterey Agreement and the proposed contract amendments to carry out the principles comply with applicable provisions of law.

We expect that the reductions in charges to the water supply contractors will increase the financial strength of the contractors and provide even greater assurance to the bondholders that they will be repaid.

#### Section 6: Legal Adequacy of EIR

A comment asserts that the Draft EIR is not adequately detailed to allow this draft, once completed as a final EIR, to be used as the legal foundation document for implementing the program described in the EIR. It also asserts that further environmental review will be required not only for future physical projects but also for implementing the principles through new legal agreements. The comment quotes from the Remy and Thomas book, *Guide to the California Environmental Quality Act (CEQA)* to the effect that to serve the function of allowing a program to proceed without needing to prepare additional site-specific environmental documents, a program EIR should be very detailed.

A review of section 15168 of the State CEQA Guidelines shows that the program EIR is designed to be a flexible device to serve in many situations. The section provides in part:

- (a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related

either: . . . (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, . . . ."  
[Emphasis added.]

A program EIR is intended to be an available device to help an agency examine the broad range of possible environmental effects of a large scale activity at an early time in the development of the activity when the agency has greater flexibility to deal with basic problems or cumulative impacts than it would have later in the implementation process. Section 15168(b)(4). Use of a program EIR does not and in fact cannot rule out the possibility of preparing subsequent EIRs or negative declarations. It lays the groundwork for subsequent environmental documents.

Guidelines section 15168(c) describes use of a program with later activities. The section requires later activities in the program to be examined for their environmental effects in the light of the program EIR to determine whether an additional environmental document must be prepared. Subsection (1) describes the situation where an additional environmental document must be prepared because the later activity will have environmental effects not examined in the program EIR. Subsection (2) allows later activities to be approved without an additional EIR or negative declaration if the agency finds the activity is within the scope of the project covered by the program EIR and the later activity has no new environmental effects or new necessary mitigation measures.

The section clearly contemplates a program EIR that cannot identify all possible later environmental effects and must be followed by later EIRs or negative declarations to address later approvals in the program that would have new environmental effects. This approach of using a program EIR at the point of approving the general program and then preparing later EIRs or negative declarations for later parts of the program is consistent with the concept of tiering. Tiering is authorized by section 15152 of the Guidelines and required wherever feasible by section 21093(b) of Public Resources Code.

The lack of such great detail as to eliminate the need for later EIRs is not a valid criticism of a program EIR.

With the Monterey Agreement now negotiated, the next step toward implementation of the program described in those principles is to adopt contract amendments to make those principles more than just a proposal. The contract amendments were drafted concurrently with the EIR as authorized by section 15004(c) of the Guidelines. The EIR will be certified and considered by Central Coast Water Authority when the Authority decides whether to execute the amendments to implement the principles. Each of the other water supply contractors and the Department of Water Resources will consider the EIR when they decide whether to execute the amendments. Additional environmental documentation will be required at that time only if there are new significant environmental effects or feasible mitigation measures not adopted that could result from those contract amendments.

Another related comment suggests that the statement of principles is too highly generalized to be susceptible of detailed analysis. Likewise, it is stated that the alternatives are too generalized. The Monterey Agreement Statement of Principles is conceptual in nature. The contract modifications implementing the conceptual principles will be very specific in nature. The EIR analyzes the environmental impacts of the conceptual changes, however, not specific legal wording. CEQA mandates environmental review of a project or program as early as

feasible in its consideration. The program EIR approach has been adopted because it allows early analysis of the conceptual changes and potential alternatives to those changes. As more specific implementing measures become known, more specific analysis will be possible. This EIR was prepared so that before the contractors and DWR take action to approve the proposed contract amendment, environmental analysis of the impact of the amendments will have been completed.

The specific legal wording of the amendments for each of the 29 contractors may differ slightly but not substantially (because the contracts presently differ in wording) and the wording proposed for each contractor's consideration will be available for public review *before* the contractor authorizes adoption of the amendment in public session. Under the Monterey Agreement, the amendment adopted must be substantively consistent with the concept analyzed in the Program EIR.

#### **Section 7: Implementation of the Principles**

A comment asserts that one difficulty in understanding the proposal in detail is in understanding whether the principles are intended to replace the contracting principles contained in the current long term water supply contracts that govern the State Water Project.

This comment raises a legal issue rather than an issue about environmental effects. The comment focuses on the particular manner in which the principles would be put into a legally enforceable form rather than the ways in which the principles would lead to changes in the physical environment.

The first page of the Monterey Agreement states that the principles will not stand on their own but will be the foundation for an agreement among the contractors and the Department. Because the current operations of the State Water Project and the various rights of the contractors and the Department are governed largely by the existing long term water supply contracts, the current approach to an implementing agreement focuses on developing amendments to the water contracts. The contractors and the Department cannot amend by themselves the governing statutes, so the contract amendments must be consistent with those statutes.

The recital in the comment regarding the history of the development of the water supply contracts is largely correct. We would add to the description a statement that the contracts have been amended many times since they were first adopted and the Monterey Agreement principles will lead to yet another round of contract amendments. These amendments will not replace the existing contracts. Indeed, the existing contracts will remain largely as they are now. The amendments, however, will modify those contracts to incorporate the Monterey Agreement principles.

#### **1. Environmental Defense Fund (letter dated June 7, 1995)**

1. CCWA provided all notice required by CEQA, including legal publication in major California newspapers and mailing to many agencies, organizations, and individuals likely to be interested in the program.
2. The Commenter was granted a time extension for comment until July 21, 1995.



3. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
2. Citizens Planning Association of Santa Barbara County (letter dated June 11, 1995)
  1. The Commenter was granted a time extension for comment until July 21, 1995.
3. Dorothy Green (letter dated June 12, 1995)
  1. The Commenter was granted a time extension for comment until July 21, 1995.
4. Central Delta Water Agency (letter dated June 19, 1995)
  1. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
  2. See "Global Response to Legal and Institutional Comments," Section 2: Monterey Agreement Principle 7.
  3. See "Global Response to Legal and Institutional Comments," Section 3: Monterey Agreement Principle 8.
5. Natural Resources Defense Council (letter dated June 19, 1995)
  1. The Commenter was granted a time extension for comment until July 21, 1995.
6. Pacific Institute (letter dated June 20, 1995)
  1. The Commenter was granted a time extension for comment until July 21, 1995. The public comment period met all CEQA requirements.
  2. The Monterey Agreement and its implementation deal with two different types of water transfers: temporary and permanent. A general comment applying to both is that this EIR is a program environmental document which does not attempt to deal with specific impacts of specific transfers. This is because while implementation of the Monterey Agreement deals with the general subject of transfers, each individual transfer must, once proposed and developed, go through a separate approval process. At this time, no specific transfers have been negotiated under the Monterey Agreement. As described in detail in the EIR, lack of knowledge of potential buyers, sellers, sources of water and other details of individual transfers make present analysis too speculative to be meaningful. Transfers contemplated under the Monterey Agreement will, by their nature, involve actions by public agencies, and thus are likely to be subject to CEQA and other necessary additional analyses and public scrutiny.

Temporary transfers are those which are instituted a year at a time, where water may be transferred from one area and type of use to another area and potentially another type of use. The most recent example of these kind of transfers is the State Drought Water Bank, which was instituted in 1991, 1992 and 1994 to meet critical

urban, agricultural and environmental water needs. Implementation of the Monterey Agreement will not change existing law with regard to temporary transfers, which already sets forth a priority in using publicly owned conveyance facilities to transport such water. Temporary transfers are subject to regulatory oversight and approval by the State Water Resources Control Board (SWRCB), as well as the individual actions taken by buyers and sellers.

All SWP water contractors are public agencies, and to the extent that third party impacts are environmental in nature, they are required to be addressed under CEQA. However, impacts that are strictly socioeconomic in nature and do not result in or induce environmental impacts are not required to be addressed under CEQA, notwithstanding the fact that such impacts are of concern and could affect the success of temporary transfers. We refer the Pacific Institute to the thorough discussion of this difficult issue in the *Program Environmental Impact Report for the State Drought Water Bank* (Department of Water Resources, November 1993, in particular pages 177 - 186), which is incorporated herein by reference. A copy of this document can be obtained from the DWR at 1416 Ninth Street, Room 338, Sacramento, CA 95814.

Many of the above-mentioned statements apply to permanent transfers, which are expected to occur as a result of Monterey Agreement implementation. Principle 4 provides for permanent sales among SWP water contractors, all of whom are public agencies which must comply with CEQA. As with temporary transfers, no permanent transactions have been completed under the Monterey Agreement and, thus, no details are available upon which to conduct a meaningful analysis of potential impacts.

3. The "expeditious approval process" referenced in the DEIR refers to requests by State Water Contractors made to the Department of Water Resources (DWR) for approval of water transfers. DWR commits to expediting such requests in a timely manner. Public participation is not part of the approval process, per se. However, should any such proposed water transfer constitute a "project" as defined by CEQA, then compliance with CEQA (including public notice and opportunity to comment) as mandated will be a prerequisite of such approval and transfer.
4. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.

7. The Bay Institute (letter dated June 20, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995.
2. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principal 12.
3. Water extractions by the State Water Project (SWP) from the Sacramento-San Joaquin Delta are currently controlled in terms of quantity and schedule of withdrawal by the SWRCB. Implementation of the Monterey Agreement and subsequent changes in water contracts can occur only within the parameters of

environmental restrictions on Delta operations. Implementation of the Monterey Agreement neither requires nor depends upon increased Delta extractions. Any future project (as defined by CEQA) that has the potential to impact environmental conditions in the Delta, should the same be proposed, will be the subject of analysis under CEQA.

8. Environmental Defense Fund (letter dated June 20, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995.

9. Plumas County, Department of Public Works (letter dated June 20, 1995)

1. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
2. The Commenter was granted a time extension for comment until July 21, 1995.

10. Eric Greening (letter dated June 21, 1995)

1. Activities aimed at reducing consumptive water use vary dramatically in their design and effectiveness as well as by geographical location. It is not feasible to develop an alternative to the Proposed Action which would adequately address this complexity and variability and which meets the project objectives. The suggested alternative is neither precluded by the Monterey Agreement nor responsive to the Agreement's objectives. Feasible and practical conservation measures should be addressed at the time when specific projects are proposed and, as such, would be part of the CEQA review of such projects.
2. The Monterey Agreement applies to all SWP water contractors who sign the agreement and subsequently modifies or amends their water contracts with DWR to comply with the Monterey Agreement principles. Specific amendments to the State Water Project water supply agreements presently are being prepared. Contractors may elect to adopt the modified language in its entirety or to keep their present contract language in place. If they elect the latter course, they may not participate in the benefits, to the extent feasible, or burdens incorporated into the Monterey Agreement principles. Like any other contract, the water supply agreements can be changed at any time if the parties agree..
3. The sentence in question: "Effects in those areas relinquishing water entitlement are likely to be centered on agricultural practices while those in areas acquiring water entitlement may relate to growth accommodation." that appeared on pp. 3-1 and 3-2 has been changed to read:

In the areas where entitlement to SWP water is relinquished the effects of such actions will most probably be experienced in the area of agricultural practices. It is possible that cropping patterns will change and/or cropland will be idled. Areas acquiring entitlement to water are likely to be urban in nature and the potential effects will focus on growth inducement concerns.

4. It is the responsibility of local water purveyors to provide a sustainable supply of water to accommodate the needs of their users. Land use decisions are made by individual cities and counties. Future land use decisions are outside the scope of this EIR. Growth and development are guided by economics, officially adopted comprehensive plans (in both incorporated and unincorporated areas of the state), the provision and availability of a wide range of community services and infrastructure, environmental review of proposed projects according to CEQA and other environmental legislation, and the entire political process. Implementation of the Monterey Agreement provides mechanisms for Contractors to firm up the reliability of their water supplies.
5. Section 3.8 provides a statewide overview of potential effects on economic patterns and community services. It is acknowledged, as described by the Commenter, that the various land uses and population densities demand differing levels of community services and contribute differing amounts to service agencies. Since the transfer of water entitlement may accommodate changes in land use and population density it is reasonable to assume that such changes, should they occur, would result in changes in the pattern of financial contribution and the demand for community services. Other potential impacts on agricultural activities in areas likely to relinquish entitlement to SWP are addressed in Section 3.6 Land Use and specifically on pages 3-12 through 3-21.

11. City of Stockton (letter dated June 21, 1995)

1. A copy of the DEIR was forwarded.

12. Environmental Defense Center (letter dated June 21, 1995)

1. Any of the signatories to the Monterey Agreement was qualified to act as lead agency for this EIR. The Central Coast Water Authority (CCWA) is the lead agency because the Department of Water Resources and the other parties to the Monterey Agreement executed an agreement designating CCWA as lead agency, as permitted by CEQA. In February 1963, the Santa Barbara County Flood Control and Water Conservation District (District) entered into a Water Supply Contract with the Department of Water Resources, agreeing to participate in the State Water Project. Between 1983 and 1986, the District assigned its rights under the Water Supply Contract to the various cities and public water districts that later formed CCWA. When these entities formed CCWA under a Joint Powers Agreement, they assigned their rights in the State Water Project to CCWA. Although the District retains certain rights in the State Water Project, CCWA represents all Project participants in Santa Barbara County.
2. The Commenter was granted a time extension for comment until July 21, 1995. The public comment period met all CEQA requirements.
3. A public hearing to receive input on the DEIR was held in Sacramento on June 9, 1995. In addition, the Board of Directors of CCWA will conduct a public hearing prior to certifying the FEIR and considering the Monterey Agreement implementing

document(s). All SWP contractors are expected to act on the amendments at public meetings at which the public will have an opportunity to comment.

13. Planning and Conservation League (letter dated June 21, 1995)

1. The use of this Program EIR to provide an overall analysis of the presently known impacts of the Monterey Agreement (which is an integrated program of conceptual principles) is entirely consistent with CEQA. CEQA requires that environmental analysis be conducted as early as possible in the course of a project or program. Where, as here, the framework of the program is being analyzed before information becomes available concerning future implementing activities, the purpose and scope of the Program EIR is to provide as complete an analysis as is practicable, given the information presently available. Under CEQA, the nature of the future actions determines what type of further environmental review is necessary. See CEQA Guidelines Section 15168 for more details as to when a Subsequent EIR or Negative Declaration must be prepared. Section 15168 states that where a later activity in the program will have effects not examined in the Program EIR, a public agency must prepare an Initial Study for that activity to determine whether an EIR or Negative Declaration is appropriate to analyze the impacts of that activity. This section also states that where the subsequent activity involves site specific operations, the public agency should use a written checklist or similar device to document whether the anticipated environmental impacts were adequately analyzed in the Program EIR.

See also "Global Response to Legal and Institutional Comments," Section 6: Legal Adequacy of EIR.

2. See "Global Response to Legal and Institutional Comments," Section 5: Amendment of Water Service Contracts.
3. Same response as for #1 above.

14. Environmental Defense Fund (letter dated June 21, 1995)

1. The EIR has not been withdrawn. Thank you for drawing our attention to Principle 12 of the Monterey Agreement. Please see "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.

15. Chevron Pipe Line Company (letter dated June 22, 1995)

1. Issues related to economics and property rights are beyond the scope of the EIR. When the Department of Water Resources (DWR) acquired the property, the seller Tenneco West, retained the mineral rights including those to oil and gas. The seller also retained the rights to conduct activities on the surface of the property necessary for exercising the mineral rights which do not unduly interfere with the anticipated operation of the property as a water bank facility. Because DWR does not own these rights and can convey only the share of the ownership that it has, the transferee agency from DWR would take the property subject to any rights held by the mineral operators.

Likewise, the pipelines that traverse the property operate under lease agreements and easements granted by past property owners. These easements define the rights of the pipeline owners and the transferee agency of DWR's interests in the land will hold those interests subject to the same lease agreements and easement rights as did DWR. There is no current proposal to negotiate changes in the lease agreements and easements and the Monterey Agreement does not contemplate or provide for such negotiations.

To the extent that the comment concerns possible environmental effects related to developing and operating the Kern Fan Element in the area of pipelines, such an analysis would be speculative at this time as long-term plans for the Kern Fan Element have not yet been identified. Thus reference to DWR's 1990 DEIR or the 1995 Kern County Water Agency (KCWA) Negative Declaration would not be appropriate as they may not reflect the ultimate plans for development.

Prior to implementation of any long-term plan for changes to the Kern Fan Element, those proposing such implementation will be required to comply with CEQA. When this subsequent documentation is prepared, opportunities for public comment will be available on the specific issues raised regarding future use of the property and any environmental impacts related to oilfield activities and pipelines.

16. Susan Ayres (letter dated June 22, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995.
2. See Commenter 12, response 3.

17. Kern County Water Agency (letter dated June 23, 1995)

1. Thank you for your comment.

18. Canyons and Streams Alliance (letter dated June 23, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995. The public comment period met all CEQA requirements.
2. See Commenter 12, response 3.
3. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.

19. Natural Heritage Institute (letter dated June 23, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995.

20. Sierra Club, Bay Chapter Water Committee (undated letter)

1. The Commenter was granted a time extension for comment until July 21, 1995.

21. California Department of Fish and Game (letter dated June 29, 1995)

1. The Commenter was granted a time extension for comment until July 21, 1995.

22. Citizens Planning Association of Santa Barbara County, Inc. (letter dated July 10, 1995)

1. Comment noted. The Commenter was granted a time extension for comment until July 21, 1995. The public comment period met all CEQA requirements.
2. The purpose of the EIR is to assess the impacts to the environment of implementing a project or program, not to analyze the motives underlying the project or program proposed by the proponent(s).
3. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
4. This comment requests information outside the scope of the EIR and does not address environmental issues.
5. Comment noted. This is not an environmental issue and need not be addressed by the EIR.
6. Comment noted. CEQA was intended to provide information to decision makers and the public as to the environmental consequences of a proposed discretionary project.
7. Please see Commenter 12, response 1.
8. The comment requests information outside the scope of the EIR and does not address environmental issues. Please see Commenter 23, response 25.
9. At the inception of the CEQA process, an Initial Study Environmental Checklist was prepared. Based on the results of this Initial Study, CCWA made the decision to prepare an Environmental Impact Report to assess the potential impacts to the environment of the proposed project. A Notice of Preparation, making reference to the Initial Study, was published on February 7, 1995, and distributed to the California State Clearinghouse and other potentially interested parties. The purpose of the Initial Study, which is available to the public upon request, is to assess the probable impacts (and level of significance) to the environment associated with implementation of the proposed project and recommend subsequent actions that should be taken in order to comply with CEQA. The Initial Study, in conjunction with comments received in response to the Notice of Preparation and at the Public Scoping Meeting were used to identify the scope and breadth of impacts addressed in this EIR. The purpose of the Initial Study was not to identify problems with the State Water Project.
10. Please see Commenter 12, response 1.

11. As a point of clarification, while Article 18(b) would be deleted with the implementation of the Monterey Agreement, Article 18(a) would be amended and not "repealed." See Commenter 10, response 2, and Commenter 23, response 25.
12. Thank you for your comment.
13. Thank you for your comment.
14. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
15. The reader is referred to material presented in Section 3.6 Land Use and specifically to Table 3.6-1 and Figure 3.6-1. The quantities of SWP water allocated to Urban and Agricultural Contractors under pre- and post-Monterey Agreement conditions are shown in Table 3.6-1 and the net changes are illustrated in Figure 3.6-1.
16. Transfer of the property comprising the Kern Fan Element would terminate the MOU between the California Department of Water Resources and the Kern County Water Agency. The transferee was initially conceived as Kern County Water Agency and later expanded to include Dudley Ridge Water District, both of which are SWP contractors. At this time, the intention is that ownership of the property ultimately vest in the Kern Water Bank Authority, a joint powers authority currently being formed.
17. The 45,000 acre-feet of entitlement will be retired, thereby reducing the SWP minimum project yield by a like amount. The contracted commitment to deliver the 45,000 AF will cease. The future SWP costs that would have been allocated to the 45,000 AF will be spread among all SWP water contractors in proportion to their respective shares of the total cumulative entitlement.
18. This is not an environmental issue and need not be addressed in the EIR.
19. The nature, extent, location, and timing for any such future facilities presently is unknown and cannot be analyzed in this Program EIR. Any such facility, if it is a project as defined by CEQA, will require CEQA compliance before it is constructed. See Commenter 23, response 6.
20. The comment raises a concern of a purely economic and not environmental nature and need not be addressed in an EIR.
21. See "Global Response to Legal and Institutional Comments," Section 3: Monterey Agreement Principle 8.
22. Thank you for your comment.
23. The precise identity of any non-contractors is not known at this time. Also, any sales to non-contractors would be at market rate; only sales to contractors and/or DWR would be at a percentage of the Delta Water Rate. The comment raises concerns of an economic and not environmental nature that need not be addressed in an EIR.



24. Thank you for your comment.
25. See "Global Response to Legal and Institutional Comments," Section 1 Monterey Agreement Principal 2 and Section 4: Monterey Agreement Principle 12. See also Commenter 10, response 4.
26. Thank you for your comment.
27. See Commenter 10, response 2, and Commenter 23, response 25.
28. The table is accurate. Thank you for your comment.
29. The projected deliveries result from iterations of the current version of the DWR Project Operations Simulation Model (DWRSIM). See response 30, following immediately.
30. The version of DWRSIM utilized here incorporates projected changes in extractions from the Delta based on flow and water quality objectives comparable to those included in the State Water Resources Control Board – Delta Water Quality Control Plan of May 1995.
31. The values in Table 3.6-1 indicate that the SWP would have delivered, on average, a total of 2,586,100 AF annually under hydrologic conditions identical to those of the past 70 years, given a total demand of 3,000,000 AF. These values represent the ability of the SWP to deliver water, given a particular level of demand. As the level of demand increases 37 percent (rising from 3,000,000 AF to 4,120,000 AF) deliveries achieved by the SWP increase only by about 16 percent (rising from 2,586,100 AF to 2,996,800 AF). The fundamental constraint is the ability of the system to supply water, given its current sources and composition and configuration of facilities.

The results of DWRSIM indicate that, with an annual demand level of 3,000,000 AF, the SWP system would deliver that quantity of water 33 times out of the 70 year history. Alternatively, the system would deliver as little as 436,000 AF in an extreme deficit year. Over the life of the SWP (through the year 1993), the maximum delivery has been 2,851,371 AF in 1989 and over the past two decades the lowest delivery has been 548,969 AF in 1991. It should be noted that, as anticipated, contractor requests for delivery of entitlement have increased over the life of the SWP and did not exceed 3,000,000 AF until 1990 which was well into the recent drought. The total SWP deliveries shown in DWRSIM are unchanged, on an annual basis, with implementation of the Monterey Agreement.

32. Results from DWRSIM do not indicate average annual deliveries in excess of 3,000,000 AF, even under projected demand conditions of 4,120,000 AF. Currently, some contractors receive deliveries in excess of their entitlement in wetter years. This is attributable to the reallocation of supplies from other contractors who do not require or are at the time unable to receive their entitlement, reallocation of contractor water that is turned back, and the availability of surplus water in wetter years. The comment regarding adequacy of deliveries ignores variation in wet and

dry years. Whereas there are delivery shortages in dry years, there is abundance in wet years.

33. Thank you for pointing out the error. The upper section in Figure 3.6-3 has been modified to indicate the correct values.
34. Thank you for pointing out the error. The upper section in Figure 3.6-5 has been modified to indicate the correct values.
35. In a number of years the KCWA on behalf of the Semitropic Water Storage District has purchased entitlement (and deliveries) from contractors who do not require or are unable to receive their entitlement in addition to turn-back and surplus waters.
36. This topic is outside the scope of the EIR.
37. The Monterey Agreement represents a suite of actions, all of which act in a complementary manner one with another and which have been arrived at through extensive negotiations among involved parties. Where details are available regarding projected activities associated with implementation of any aspect of the agreement, i.e., principle or part thereof, it is the responsibility of the EIR to address them. This responsibility exists, even in the case of a programmatic document such as this.

Anticipated changes in the operations of the southern terminal reservoirs will likely result in an increase in the reliability of supplies to the contractors receiving water from these facilities. This increased operational flexibility and resulting reliability of water supply will help offset, it is anticipated, the potential reduction in reliability to Urban Contractors brought about by elimination of the initial agricultural deficiency.

38. Operations at the southern terminal reservoirs are conducted by DWR and, as such, are designed to optimize goals set forth by DWR. Changes in operations, through increased active participation by the Urban Contractors bearing the expense of their construction, are designed to mesh more closely with operation of local storage facilities and more effectively and efficiently meet the needs and goals of these contractors.
39. Thank you for your comment.
40. Implementation of Principle 6 associated with operation of the southern terminal reservoirs will allow the contractors who participate in the repayment of the costs of the respective reservoirs to participate in the operations of the reservoirs in a manner which integrates them more closely with operations of their systems as a whole. Implementation of the principle reduces the constraints placed on the operation of the reservoirs and offers the possibility to increase the firm yield of the SWP. In that regard, it does allow these contractors more opportunity for conjunctive use of their supplies and resources.
41. Thank you for your comment.

42. There are two plausible explanations for the increase in TDS observed for source water from Castaic Lake as stated in the text: intrusion of sea water at the point of extraction in the Delta; and above-normal levels of evaporation associated with past drought conditions. Over the period 1987-1993, TDS increased about 46 percent (281 to 410 mg/l), sodium increased about 55 percent (49 to 76 mg/l) and chloride increased about 49 percent (61 to 91 mg/l).

The sentence in question ("Source and finished water levels of *Giardia* were 0.05 and less than 1 cysts/100 liters, respectively") is replaced by the following statement "Source water levels for *Giardia* were 0.05 cysts/100 liters. No *Giardia* were detected in any of the finished water samples."

23. Citizens Planning Association of Santa Barbara County, Inc. (letter dated July 11, 1995)

1. The comment notes what is widely recognized - that during the recent prolonged drought, the SWP did not make full deliveries for several consecutive years. The EIR does not assert that the SWP will deliver any particular volume of water from one year to the next. The EIR analyzes the potential impacts of a program intended to allocate whatever water is available from the project in a manner that makes the SWP more reliable and affordable to the contractors.
2. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
3. The comment writer appears to misunderstand how the Monterey Agreement will be implemented and why. Implementation of the Monterey Agreement does not involve or require additional or modified water diversions. SWP diversions already are controlled and restricted by other requirements now in place. Implementation of the Monterey Agreement does not require construction of a peripheral canal. In fact, the Monterey Agreement includes no specific future construction to complete the project. Any such project(s), if it/they occur, must comply with CEQA.
4. See Commenter 7, response 3.
5. See Response 2 immediately above.
6. No one knows what facilities will be built pursuant to existing provisions of the water supply contracts to complete the SWP. No one can say where those facilities will be, when (if ever) they will be built, or what environmental circumstances will surround their construction. Each such facility, if or when proposed, must undergo CEQA compliance. This Program EIR has no facts upon which to base an analysis of impacts of such facilities.
7. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
8. See Commenter 7, response 3.

9. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
10. See Response 6 immediately above.
11. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
12. Thank you for your comment. Unfortunately, it is not sufficiently specific to identify what environmental damage the Commenter references. Existing environmental impacts of the SWP are outside the scope of this EIR. The objective of this program is to better manage the water available from the SWP. If any adverse environmental impacts now are occurring because of inadequate or unreliable deliveries, these impacts may be reduced as a result of the program.
13. See Commenter 10, response 4.
14. Thank you for your comment. Unfortunately, it is unclear what businesses in what areas of the State the Commenter believes are impacted, and in what way they are impacted by the status quo. Ordinarily, purely economic impacts are not the subject of CEQA review. As noted in response 12 immediately above, the Monterey Agreement seeks to increase reliability and predictability of SWP deliveries. To the extent this objective is met, adverse economic impacts resulting from the status quo will be reduced.
15. See Commenter 10, response 4.
16. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
17. The comment is correct. Implementation of the Monterey Agreement Principles is not expected to have any significant impacts on the Sacramento-San Joaquin Delta or other SWP water sources. Implementation of the Monterey Agreement would allow the existing water resources of the SWP to be utilized in a more efficient and effective manner. All SWP operations are restricted by the State Water Resources Control Board (SWRCB) decisions and orders. The Monterey Agreement will not result in increased extractions from the Delta beyond those authorized by the SWRCB from time to time. The SWRCB restrictions have been formulated to minimize fish and water quality impacts of the SWP and other projects. The second sentence of the comment misinterprets the EIR's analysis of issues such as groundwater, water quality, air quality, biological resources, and land use. The EIR analyzes all of these issues to the extent the program is anticipated to create impacts and to the extent that impacts presently can be analyzed. The EIR acknowledges that some site-specific impacts, particularly those resulting from future projects on the KFE land and future transfers of entitlement, may occur. These impacts can be identified and properly analyzed through the CEQA review mandated for specific projects when they are described and proposed.

18. The DEIR addresses the foreseeable environmental impacts associated with implementation of all aspects of the Monterey Agreement. Purely economic issues are not within the scope of the EIR. See also "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
19. The Commenter appears to misunderstand what the EIR says regarding cumulative impact analysis. The text referenced (the first paragraph on Page 6-1 of the EIR) states that "detailed cumulative analysis of the Monterey Agreement program with past, present, and reasonable anticipated future projects is also speculative." The EIR points out that as a programmatic document prepared early in the implementation process, this EIR has no access to detailed information as to the environmental impacts, and when and where they will occur, of implementation. As specific projects are undertaken in the future to implement the Monterey Agreement principles, they must comply with CEQA. CEQA requires that the environmental documents for these projects include analysis of cumulative impacts, if any are anticipated. The writers of these future CEQA documents will have available the necessary and current information as to what cumulative impacts might occur as a result of the projects, information not now known. Please also see "Global Response to Legal and Institutional Comments," Section 2: Monterey Agreement Principle 2, and Section 4: Monterey Agreement Principle 12.

Principle 2b of the Monterey Agreement is the deletion of Article 18(b) of the existing water supply contracts. Article 18(b) currently provides for an overall reduction in the Table A entitlement schedules for each contractor "[i]n the event that the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield, or if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors . . . ."

If Principle 2b were implemented in isolation from the other principles of the Agreement, it would result in no changes in delivery of total Project water, although it would likely result in an altered allocation of water among the contractors. Taken in context with implementation of the other principles, particularly with respect to the Interruptible Water Service program (Principle 7) and the clarifications made to the water supply deficiency provisions (Principle 1, Principle 2a), current Article 18(b) if implemented would result in no changes in water allocation and is consequently no longer necessary.

20. An indication of what would most probably have been deliveries to both Urban and Agricultural Contractors under conditions identical to those proposed through implementation of the Monterey Agreement is presented in Table 3.6-1 and Figure 3.6-1. Under conditions close to those experienced presently (demand level of 3,000,000 AF/year) and without the transfer of 130,000 AF/year from Agricultural to Urban Contractors, the Urban Contractors would, on average, experience no significant change in deliveries. With the transfer of the 130,000 AF/year, the Urban Contractors would experience an average increase in deliveries of 105,100 AF/year.

At higher levels of SWP demand, if one were to disregard the agricultural contractors' agreement to provide up to 130,000 AF of entitlement for transfer to Urban Contractors wishing to increase their delivery reliability, and disregard the 45,000 AF entitlement retired, one could conclude that the reliability of deliveries to Urban Contractors will be reduced with elimination of the initial agricultural deficiency. However, as the Monterey Agreement is a negotiated package of principles, all of which must be accepted by signatories, any such reduction in water delivery reliability to the Urban Contractors is expected to be offset by provisions of the Monterey Agreement that provide for the transfer of entitlement from Agricultural to Urban Contractors, changes in how the southern terminal reservoirs may be operated, retirement of entitlement, and the ability to store entitlement water outside a contractor's service area.

21. See response 22 immediately below and Commenter 10, response 4.
22. The Monterey Agreement is the result of negotiations between SWP contractors and DWR regarding a number of outstanding issues and disagreements. As such, it contains compromises and trade-off. Contractors are asked to accept this integrated package of principles that reflect the negotiated positions. An example of the agreements crafted under the Monterey Agreement is the transfer and subsequent retirement of 45,000 AF of entitlement and availability for transfer of an additional 130,000 AF of entitlement from Agricultural Contractors. This relinquishment of entitlement is a trade-off, in part, for the transfer of the Kern Fan Element property.
23. See "Global Response to Legal and Institutional Comments," Section 2: Monterey Agreement Principle 7.
24. See "Global Response to Legal and Institutional Comments," Section 3: Monterey Agreement Principle 8.
25. This comment raises legal rather than environmental issues. Nonetheless, this EIR is a full disclosure document and these responses to comments are intended to respond as fully as feasible to the public's concerns. The Monterey Agreement Principles will be incorporated into an integrated package of water supply contract amendments that will be presented to all of the contractors for adoption. In addition, documents implementing transfer of the Kern Fan Element property will be executed only by the parties to that transaction. If a contractor fails to adopt the water supply contract amendments, the contractor's existing water supply contract (including but not limited to existing Articles 18[a] and 18[b]) will apply to that contractor's share of the benefits and obligations of the State Water Project. Unless contractors holding a substantial share of entitlement execute the amendments, the Monterey Agreement Principles would not be implemented and the contractors will be forced to consider other options.
26. See Commenter 12, response 3.
27. This comment raises an economic rather than environmental issue. The DEIR solely addresses environmental issues consistent with CEQA. As the comment writer has

noted, however, the Monterey Agreement was structured to include provisions that will make the contracts more affordable (and deliveries more reliable) to contractors, thereby promoting the common interest in preserving and enhancing the long-term viability of the project for its participants.

28. This is an economic issue that is not part of CEQA review.
  29. This is a legal, not an environmental, issue and is not appropriate for inclusion in the EIR.
  30. Water rights and application of the "reasonable and beneficial use" doctrine raises a legal, not an environmental, issue and is outside the scope of this EIR. Water users' respective legal rights to water and how it is used doesn't fall within the program description. Implementation of the Monterey Agreement in no way impacts California law regarding water rights and the reasonable and beneficial use of water.
24. Plumas County, Department of Public Works (letter dated July 11, 1995)
1. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
  2. This comment raises legal rather than environmental issues. Nonetheless, this EIR is a full disclosure document and these responses to comments are intended to respond as fully as feasible to the public's concerns. The Monterey Agreement Principles will be implemented by SWP contract amendments and other agreements. If a contractor fails to adopt the water supply contract amendments that are presented as a package to that contractor, the contractor's existing water supply contract [including but not limited to existing Articles 18(a) and 18(b)] will apply to that contractor's share of the benefits and obligations of the State Water Project. If contractors holding a substantial share of entitlement fail to execute the amendments, the Monterey Agreement Principles would not be implemented and the contractors will be forced to consider other options.
25. Citizens Planning Association of Santa Barbara County, Inc. (letter dated July 14, 1995)
1. See Commenter 12, response 1.
  2. While the comment is incorrect (Solano County Water Agency is located in Northern California.) the content is outside the scope of the EIR.
  3. Thank you for your comment. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 regarding Article 18(b) as an alternative to the Monterey Agreement.
  4. The Kern Fan Element was planned as a future facility of the SWP to meet the contractual requirements of the water supply contracts. As part of the package of actions that will implement the Monterey Agreement, transfer of the Kern Fan Element to agricultural contractors will aid substantially in meeting water

requirements. First, as set forth in Principle 3 of the Monterey Agreement, there will be a reduction of 45,000 acre-feet in the maximum cumulative SWP contractual amounts. Second, the Monterey Agreement was negotiated as a package of actions, and the benefits of voluntary reallocations of water among SWP contractors through permanent water transfers and the annual turnback pool would not have been gained without transfer of the Kern Fan Element property. Third, there have been serious questions raised concerning practical implementation of the Kern Fan Element as a SWP-only program, given the large and diverse number of water districts and contemplated local water supply uses associated with the Kern Fan Element. While the Kern Fan Element has been the subject of intense study as a potential SWP water facility, it has not yet been implemented - in part due to unresolved institutional issues. Finally, the Monterey Agreement provides that urban contractors may participate in use of the Kern Fan Element property, which could result in increased reliability and flexibility of use in their SWP and local water supplies.

Implementation of Article 18(b), as set forth elsewhere in this document, could result in substantial reallocation of water from urban to agricultural water uses. CPA has offered no substantiation for the assertion that implementation of Article 18(b) would make transfer of the Kern Fan Element unnecessary. The Monterey Agreement Principles incorporate a balancing of urban and agricultural users' interests. Transfer of control over the Kern Fan Element is a part of that balance. As set forth above, such transfer will aid in meeting future SWP needs. In addition, use of the Kern Fan Element property by participating agricultural contractors will allow them to make more effective use of both their SWP and local water supplies.

5. CPA offers no substantiation for the statement that implementation of Article 18(b) would make such uses of the terminal reservoirs unnecessary. Providing greater use of existing facilities is a logical, cost-effective and necessary step for a water project that has had difficulties in increasing firm water supplies. By using these reservoirs, certain urban contractors can better manage their existing supplies. Also please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
6. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
7. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
8. The use of this Program EIR to provide an overall analysis of the presently known impacts of the Monterey Agreement (which is an integrated program of conceptual principles) is entirely consistent with CEQA. CEQA requires that environmental analysis be conducted as early as possible in the course of a project or program. Where, as here, the framework of the program is being analyzed before information becomes available concerning future implementing activities, the purpose and scope of the Program EIR is to provide as complete an analysis as is practicable, given the information presently available. Under CEQA, the nature of the future actions determines what type of further environmental review is necessary. See CEQA



Guidelines Section 15168 for more details as to when a Subsequent EIR or Negative Declaration must be prepared. Section 15168 states that where a later activity in the program will have effects not examined in the Program EIR, a public agency must prepare an Initial Study for that activity to determine whether an EIR or Negative Declaration is appropriate to analyze the impacts of that activity. This section also states that where the subsequent activity involves site specific operations, the public agency should use a written checklist or similar device to document whether the anticipated environmental impacts were adequately analyzed in the Program EIR. Regarding the appropriateness of CCWA acting as Lead Agency, see Commenter 12, response 1.

9. See Commenter 23, response 6.
10. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12 and Section 1: Monterey Agreement Principle 2.
11. This comment expresses an apparent misunderstanding as to the overall purpose of the Monterey Agreement Principles - to reallocate the resources of the State Water Project to better meet the needs of all contractors - both urban and agricultural. The principles are integrated. Some benefit urban contractors more than agricultural; some provide greater benefit to agricultural contractors. Overall, the principles balance the needs of both types of water users and provide a mechanism for sharing the project resources in a manner that avoids undue hardship to any type of contractor.
12. See Commenter 24, response 2.
13. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
14. The Central Coast Water Authority (CCWA) is included in parentheses after the Santa Barbara County Flood Control and Water Conservation District for the following reason. This same reason explains why CCWA is qualified to act as lead agency for this EIR. In February 1963, the Santa Barbara County Flood Control and Water Conservation District (District) entered into a Water Supply Contract with the Department of Water Resources, agreeing to participate in the State Water Project. Between 1983 and 1986, the District assigned its rights under the Water Supply Contract to the various cities and public water districts that later formed CCWA. When these entities formed CCWA under a Joint Powers Agreement, they assigned their rights in the State Water Project to CCWA. Although the District retains certain rights in the State Water Project, CCWA represents the majority of Project participants in Santa Barbara County.
15. This comment raises a legal, not an environmental issue. The writer appears to misunderstand the wording and intent of Principle 14. The Monterey Agreement was negotiated as a settlement among conflicting interests. As with most settlement negotiations, the parties to the Monterey Agreement were willing to compromise their positions solely if those compromises were not held against them in the event

settlement failed. Principle 14 prohibits any party to the Monterey Agreement from using the compromise principles against any other party in a future court proceeding should the principles not be implemented. Only those who signed the contract are bound by its provisions, although a court doubtless would consider Principle 14 (and the good faith it evidences) if a non-party were to introduce the Monterey Agreement against an adversary in a court proceeding.

26. **California Sportfishing Protection Alliance (letter dated July 18, 1995)**

1. CSPA did not request notice of the Draft EIR as mandated by CEQA for receipt of individual notification. CCWA provided all notice required by CEQA, including legal publication in major California newspapers and mailing to many agencies, organizations, and individuals likely to be interested in the program. We are pleased that CSPA has taken the opportunity to comment on the DEIR and have added CSPA to the notice list.
2. The comment notes the widely recognized prolonged drought in California that substantially reduced project deliveries for many years.
3. The existing project inadequacies provided the impetus for the Monterey Agreement. They are discussed as part of the "No Project" alternative. The focus of this EIR is on the potential environmental impacts of the proposed project. Woven throughout the EIR analysis of project impacts is a discussion of the consequences if the project is not implemented and the status quo continues. See also Commenter 7, response 3.
4. A complete analysis of the SWP system and its capacity is outside the scope of this EIR. The program analyzed in this document comprises specific integrated principles that will reallocate the available resources of the system with its existing limitations.
5. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
6. The Monterey Agreement does not call for the diversion of an additional two million acre feet of water from the Bay-Delta and does not propose projects designed to accomplish such a goal. See also Commenter 7, response 3.
7. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4 Monterey Agreement Principle 12..
8. See Commenter 7, response 3.
9. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
10. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.

11. See Commenter 23, response 6.
12. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
13. See Commenter 23, response 12.
14. See Commenter 10, response 4.
15. See Commenter 23, response 14.
16. See Commenter 10, response 4.
17. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
18. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
19. See Commenter 23, response 17.
20. See Commenter 23, response 18.
21. See Commenter 23, response 19.
22. See Commenter 23, response 19.
23. See Commenter 23, response 20.
24. Entitlement to SWP water is based on shares of what was, at the inception of the SWP, projected to be the average annual total amount available under conditions of full build-out for the system. The system has not achieved full build-out and, hence, deliveries reflect the sources of water currently available. Thus, the quantity of SWP water delivered to contractors ("wet" water) is typically less than entitlement ("paper" water). Prudent land use planning would call for recognition of these conditions and the schedule for completion of the SWP, together with the reliability of other water supplies available to a community. The quantities of water delivered by the SWP to both Urban and Agricultural Contractors under hydrological conditions identical to those experienced over the past 70 years are indicated in Figure 3.6-2 (without water transfers) and Figure 3.6-3 (with water transfers). The State Water Contractors do not make land use decisions. The assumptions that local land use authorities may or may not make regarding SWP delivery reliability are not part of the project analyzed in this EIR.

See also Commenter 10, response 4.

25. See Commenter 23, response 22.

26. Please see "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.

27. See Commenter 23, response 24.

28. See Commenter 23, response 25.

29. See Commenter 12, response 3.

30. See Commenter 23, response 27.

31. See Commenter 23, response 28.

32. See Commenter 23, response 29.

33. See Commenter 23, response 30.

27. State of California, Department of Fish and Game (letter dated July 20, 1995)

1. Thank you for your comment. As stated above in previous responses to comments, this EIR assumes, as it must, that future projects (if and when planned) will comply with CEQA before they are undertaken. These future projects are speculative. CEQA does not require an EIR to speculate.
2. Implementation of the Monterey Agreement has no presently ascertainable impacts on state- or federally-listed species or their habitats. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
3. See "Global Response to Legal and Institutional Comments," Section 2: Monterey Agreement Principle 7.
4. The 45,000 AF of entitlement proposed to be retired is part of the integrated package of compromises that constitute the Monterey Agreement. This entitlement retirement benefits all SWP water contractors by reducing the total water delivery commitment of the project. This benefit will be felt in those water-short years when water available to the project is less than contractor demands. In such water years the demand will be reduced and consequently the shortages apportioned among the contractors will be reduced. However, even with this reduction, the SWP's reliable supply will remain well below total contractor entitlements. Therefore, this demand reduction will not create a water supply available for other uses as suggested by the comment.
5. Changes in cropping patterns in the water districts relinquishing and transferring entitlement are addressed at a general level. However, projects occurring subsequent to modifications to water contracts designed to implement terms of the Monterey Agreement that involve the transfer of water entitlement by public agencies will be subject to CEQA.
6. One of the purposes of a Program EIR is to present a range of conditions that could occur in the future and assess the likely environmental implications of their

implementation. In so doing, the Program EIR provides the possibility that future actions that fall within the range of those described under the program can tier off this document and the analysis contained therein.

7. The EIR does not identify details of the exact manner in which the KFE will be utilized, i.e., the preliminary design and lay-out of spreading ponds and related facilities. At the time that specific designs are available, compliance with CEQA and other laws, if applicable, will be required. This is also the case under the "No Project" alternative. It is anticipated that the project proponent will complete consultations with the CDFG regarding the development and implementation of a Habitat Conservation Plan (HCP).
8. Sources of water to be used in the operation of the KFE, other than SWP water, could be numerous since implementation of the Monterey Agreement will allow the transport of non-SWP water through the SWP facilities. It is likely that floodwaters of the Kern River will be utilized when possible. The amount of surface area needed to accommodate the quantity of groundwater recharge is not known at this time. It is necessary that operational design criteria and parameters be developed to accomplish the stated goals of the entities which will assume responsibility for operation of the KFE. Consultations with appropriate state and federal agencies will occur and a Habitat Conservation Plan will be developed prior to the initiation of activities on the KFE.
9. Thank you for your comment. Any existing agreements regarding the designated use of KFE lands for habitat conservation, to the extent they are binding and run with the land, will be binding on any subsequent owner of the property.
10. Changes in water surface elevation at both Castaic Lake and Lake Perris, especially under Scenarios A and B, are not dissimilar to those that have historically occurred. Thus, there have been temporary changes in the extent and composition of terrestrial and aquatic habitat virtually identical to those anticipated in the future. Scenario C contains circumstances that call for the withdrawal of approximately half of the water allocated for conservation purposes and its replacement within a five-year period. It is anticipated that such an occurrence would be exceptionally infrequent.

Existing shoreline vegetation reflects the fluctuating nature of the present conditions at both reservoirs.

There are very few established native trees at Castaic due to fluctuating water levels. (A past attempt at planting willows to improve fishery habitat failed because of fluctuating water levels.)

At Lake Perris the existing willow riparian habitat is constantly changing depending on water levels. Arroyo willow is a relatively short-lived fast-growing tree that has survived at the lake because of its ability to deal with changing conditions.

No listed or proposed threatened or endangered species were found to be associated with the shoreline habitats at either reservoir and no significant impacts are anticipated.

Willow riparian habitat is expected to re-establish quickly at Perris in reaction to any major changes in water level associated with any of the scenarios. If this does not occur and the existing habitat dies, we recommend consultation with appropriate agencies and implementation of remedial measures.

The reoperation of Lake Perris, under any of the wide range of scenarios presented, would not be expected to adversely affect adjacent or regional upland game habitat. The habitat quality of these lands, and the animals using them, are not directly dependent on the lake surface elevation or water volume stored in Lake Perris. Since the range of operations is expected to be within the historic range, surface water would be expected to be available to wildlife within a few feet of its current or historic location (See Table 4.2-2 of the Draft EIR, page 4-18).

The reoperation of Perris would not be expected to significantly alter lake level or surface area and therefore water fowl habitat. The surface area of Lake Perris has historically varied from approximately 2090 acres (average monthly value for late summers from 1974 to 1994) to 2240 acres (average monthly March value). Similarly, average water levels have varied from a high of 1,585 feet in March to a low of 1575 feet in both August and September. The reduction in average monthly lake levels under Scenario C would be expected to be a maximum of 7.4 to a minimum of 2.3 feet. Reductions in lake levels under Scenario C would be expected to decrease the amount of lake surface area (average monthly value) by an additional 30 to 107 acres. The larger value is less than a five percent change in lake surface area.

San Jacinto Wildlife Area (SJWA) is a California Department of Fish and Game managed freshwater wetland immediately east of the Lake Perris State Recreation Area. The SJWA is not hydrologically tied to Lake Perris. The SJWA receives its water from the Hemet/San Jacinto Water Reclamation Plant. This recycled water is the source for the approximately 5,000 acre wetland. The recycled water allocation to the San Jacinto Wildlife Area was 2,200 AF in 1990 and expected to be increased to 4,500 AF by 2000 (California DWR, *California Water Plan Update*, Bulletin 160-93, 1994). Since they are not hydrologically coupled, reoperation of Lake Perris under any of the Scenarios will have no effect on the hydrology or wildlife habitat quality of the SJWA or other regional aquatic habitats.

The potential reduction of open water and shallow water habitats in the Lake Perris/San Jacinto River region would not be expected to be a significant impact to overall waterfowl habitat. A potential decrease in water levels at Lake Perris under any of the scenarios described in the EIR is of insufficient magnitude to affect regional waterfowl populations. Use of Lake Perris and other regional waterfowl areas by ducks varies year to year depending on a number of factors including climatic conditions, local habitat quality as well as habitat quality along the rest of the migration route, and health of the ducks.

Several species of ducks winter at the lake, primarily mallard, northern pintail, gadwall, green-winged teal, and scaup. These species mainly eat submerged aquatic vegetation that is relatively abundant in the shallow water along the shoreline at Lake Perris. This vegetation type is not expected to be significantly reduced due to reoperation because the plants grow rapidly and quickly adjust to the various lake levels. The small reduction of lake surface area anticipated under Scenario C would not restrict any of these species from landing on or utilizing the lake's open water, shallow water, and shoreline habitats. If, in the case of an unusual low water event, access for waterfowl to protective shoreline vegetation is restricted, populations of waterfowl would likely be reduced at Lake Perris for that time period. Under these unlikely and infrequent conditions, waterfowl use of the adjacent San Jacinto Wildlife Area would likely increase. Following such an event, wildlife habitat value at Lake Perris would rapidly revert to its existing quality when water levels were restored.

Several species of ducks winter at the lake including mallard, northern pintail, American wigeon, northern shoveler, cinnamon teal, and bufflehead. These species mainly eat submerged aquatic vegetation that is relatively abundant in the shallow water along the shoreline at Lake Perris. This vegetation type is not expected to be significantly reduced due to reoperation because the plants grow rapidly and quickly adjust to the various lake levels. The small reduction of lake surface area anticipated under Scenario C would not restrict any of these species from landing on or utilizing the lake's open water, shallow water, and shoreline habitats. If, in the case of an unusual low water event, access for waterfowl to protective shoreline vegetation is restricted, populations of waterfowl would likely be reduced at Lake Perris for that time period. Under these unlikely and infrequent conditions, waterfowl use of the adjacent San Jacinto Wildlife Area would likely increase. Wildlife habitat value at Lake Perris would rapidly revert to its existing quality when water levels were restored.

11. See Commenter 23, response 17. Total SWP deliveries are restricted by the existing constraints on Delta extractions. Implementation of the Monterey Agreement Principles will have no impact whatsoever on these restrictions. With or without the Monterey Agreement, DWR must operate the SWP subject to Delta restrictions as they exist from time to time. Implementation of the Monterey Agreement will make the use of SWP water (regardless of whether the year is wet or dry) more efficient. The Commenter appears to misunderstand the "interruptible water supply" category. This category takes the place of existing "surplus," "wet weather," and "12(d)" categories as described in the EIR. It does not represent new water or additional Delta extractions. Please see "Global Response to Legal and Institutional Comments," Section 2: Monterey Agreement Principle 7. Regarding the portion of the comment referring to the "reaffirmation by DWR of the commitment to complete the SWP," see "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12. The impacts of construction of future facilities to complete the SWP will occur with or without implementation of the Monterey Agreement. Any such impacts must be analyzed consistent with CEQA at the time the projects are proposed.

12. See Commenter 7, response 3.
13. The DWRSIM runs included in the Draft EIR were used to analyze the impacts of the change in the method of allocating water among contractors, i.e., the implementation of Principles 1 and 2. For this purpose, all three runs included existing facilities only, and operational and flow requirements substantially consistent with the those adopted by the State Water Resources Control Board in May 1995. These runs set forth, at three different levels of SWP contractor demand, the total amount of water that would be available to the contractors at those demand levels under various hydrologic conditions. The analysis in the Draft EIR shows how these resulting total SWP supplies from the DWRSIM runs would be allocated among the contractors, comparing current allocations to agricultural and urban contractors with those resulting from implementation of the Monterey Agreement.
14. See Commenter 7, response 3.
15. It is anticipated that a number of the actions that are required to implement the Monterey Agreement will be subject to CEQA review. Such a requirement would apply to all projects associated with the transfer of water entitlement and the KFE. Specific characterization of these future actions is not available at this time and impact analysis is not possible. In the case of the southern terminal reservoirs, which were constructed prior to implementation of CEQA, operational activities are not subject to CEQA review.
16. Potential impacts of induced growth are associated mainly with anticipated transfers of water entitlement from Agricultural Contractors to Urban Contractors. The specific contractors involved in such transfers are not known at this time and, thus, it is not possible to identify, at a service area level, potential impacts. Each transfer will be subject to CEQA compliance at the time that it is proposed and the appropriate documentation will be prepared by the responsible agency. The development of mitigation plans or regional multi-species plans require a level of specificity that is currently not available. Potential impacts of growth induced by implementation of the Monterey Agreement Principles are expected to be associated (if they occur) with transfers of water entitlements from agricultural areas to urban areas. The Commenter suggests that this EIR should include mitigation measures to offset the impacts of potential growth. The Commenter particularly suggests that comprehensive regional species protection plans be funded through water delivery fees or subdivision development fees. Because this Programmatic EIR is written before any such transfers have been formulated, it is impossible to determine whether any growth will be induced by the transfers and, if such growth occurs, when and where it will occur and what impact it will have on fish and wildlife and their habitats. The in-depth, area-specific analysis of potential growth inducement and its impacts suggested by the Commenter should occur at the time that entitlement transfers are proposed. Meaningful environmental analysis then can occur based on the circumstances surrounding the proposed transfers. The environmental documents prepared for these entitlement transfers must include appropriate mitigation measures in order to comply with CEQA. Imposition of water delivery fees or subdivision approval fees for the purpose of funding species



and habitat protection plans is outside the jurisdiction of the State Water Project contractors and DWR.

17. In the case of the southern terminal reservoirs, which were constructed prior to implementation of CEQA, operational activities are not subject to CEQA review. Changes in water surface elevation and the quantity of water in conservation storage are not expected to differ substantially from past variations. The purpose of the program is to make water deliveries more affordable and reliable. Increased reliability helps contractors plan for droughts which, without adequate planning, result in severe shortages and overdrafting of groundwater basins. These overdrafts can result in damage to riparian environments, stream flows, and fisheries. Water shortages also can result in significant drawdown of reservoirs which also can adversely affect fisheries.
18. See Commenter 7, response 3.
19. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
20. Figure 1.2-1 has been revised to include the Coastal Branch of the SWP.
21. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
22. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12 and Section 3: Monterey Agreement Principle 8.
23. Projects on the Kern Fan Element will be subject to CEQA review. Additionally, it is anticipated that a Habitat Conservation Plan will be developed as part of any such projects.
24. Characteristics of the land use types referred to under each of the development scenarios associated with the Kern Fan Element are included in Table 2.2-1. The term "disturbed vegetation" refers to land maintained under dry farming for vegetation management.
25. The Monterey Agreement does not contain proposed actions that contribute to the completion of the SWP. Principle 12 of the Agreement does, however, reaffirm the obligation of DWR to do so.
26. The comment correctly summarizes section 2.4 on page 2-15 of the EIR. Despite the Commenter's statement of opinion that "clearly, achievement of these objectives will result in severe unmitigated impacts to fish and wildlife," the EIR writer's analysis of all of the ascertainable environmental impacts of implementation of the Monterey Agreement reveals no significant unmitigated impacts to fish and wildlife. The comment lacks specificity, making it impossible to detect what impacts the writer references. In short, the potential for the types of impacts described in the comment is not clear.

27. The Monterey Agreement provides immediate alleviation of a problem. Future actions potentially involving changes in diversions from the Bay-Delta are unpredictable. The Monterey Agreement is an immediate solution to a known problem.
28. Improvements in the supply reliability afforded through implementation of the Monterey Agreement may or may not likely induce growth depending upon the other factors that affect growth in a community. See Commenter 10, response 4. Whereas the availability of water may or may not accommodate growth, it does not induce it. The program also could result in and involve changes in cropping patterns. The specifics of any such changes would need to be assessed in future CEQA documents prepared by agencies ultimately involved in water entitlement transfers.
29. The CEQA process involved the preparation of an Initial Study which is circulated publicly and the subject of public hearings. Based on these actions, the appropriate level of environmental analysis, impact assessment and documentation is determined. Categorical exemptions are only one of a number of levels of documentation that might be appropriate for specific proposed actions. For specific actions addressed in this document (ostensibly those proposed for the Kern Fan Element and southern terminal reservoirs) no significant environmental impacts are identified.
30. Figures 3.6-3 and 3.6-5 have been corrected.
31. The level of analysis adopted here is, of necessity, broad in nature because of the lack of specific information regarding the exact nature of transfers of water entitlement. When specific information is available regarding the location of transferor and transferee and the quantity of water to be transferred, CEQA analysis will be prepared.
32. Refer to response 31 immediately above.
33. Comment noted. The text has been rewritten as follows: "Annual storage withdrawals from San Luis Reservoir are made during the summer and early fall to meet high demands when diversions from the Delta are most limited by supply availability."
34. Implementation of the Monterey Agreement Principles is not expected to have any significant impacts on the Sacramento-San Joaquin Delta or other SWP water sources. Implementation of the Monterey Agreement would allow the existing water resources of the SWP to be utilized in a more efficient and effective manner. All SWP operations are restricted by the State Water Resources Control Board (SWRCB) decisions and orders. The SWRCB restrictions have been formulated to minimize fish and water quality impacts of the SWP and other projects. The Monterey Agreement will not result in extractions from the Delta beyond those authorized by the SWRCB.
35. See response 34, above.

36. With the transfer of ownership of the Kern Fan Element property, subsequent CEQA compliance will be the responsibility of the new property owner. It is anticipated that this will be the Kern Water Bank Authority, a joint powers authority currently undergoing formation.
37. Thank you for your comment.
38. Thank you for your comment.
39. Please refer to Response 24 immediately above.
40. The terms "minimal" and "moderate" provide a qualitative description in the text of conditions that are quantitatively described in the accompanying figures and tables.
41. See response 7 immediately above.
42. Implementation of the Monterey Agreement Principles will not impact the Delta, so no cumulative impacts are expected to occur. See Commenter 7, response 3.
43. It is acknowledged that activities associated with implementation of the Monterey Agreement (most specifically extractions from the Delta) must conform to provisions of all applicable agreements and regulations.
44. Comment noted. Please see Section 3.0, Errata. The second to the last sentence in the paragraph has been deleted to improve clarity.
45. Thank you for your comment.

28. Pacific Institute (letter dated July 20, 1995)

1. To the degree possible and given the current level of available detail, the EIR does identify potential changes in land uses as presented in Section 3.6, Land Use. Detailed information regarding the exact location of areas relinquishing and acquiring entitlement is not available at this time. When available, appropriate CEQA documentation will be prepared by the responsible public agency.
2. See Response 1 immediately above.
3. As indicated in the DEIR and in this final document, individual water transfers contemplated under the Monterey Agreement are not evaluated because sellers and buyers are not known. As such transfers are negotiated, the participants must comply with CEQA before consummating the transfers. It is not a responsible action to evaluate purely speculative scenarios as suggested by the Pacific Institute. Necessary mitigation measures need to be crafted to match the specific transfer, and it is quite likely that factors such as frequency and manner of transfer will have just as much of an impact (positive and negative) on the environment and third party economic interests as the magnitude of the transfer and the locations of the sellers and buyers. There are simply too many variables to consider in such a speculative exercise, and it would be nearly impossible to develop potential mitigation measures (to the extent

such would be needed) without knowing or assuming very specific details. CEQA does not require that an EIR include speculation and conjecture in its analysis.

We appreciate the Pacific Institute's concerns regarding third party economic impacts. They are an important factor with regard to transfers. While addressing such impacts to the degree suggested by the Pacific Institute goes well beyond the requirements of CEQA, the Department of Water Resources made a substantial effort to address this issue in their 1993 *State Drought Water Bank Program Environmental Impact Report* (DWR, November 1993, pp. 177-186). It still remains the most thorough discussion of this issue, and relies on the experiences of the 1991 and 1992 Drought Water Banks. Copies of this document are available through the Department of Water Resources, 1416 Ninth Street, Sacramento, CA.

4. See Response 1 immediately above.
5. See Response 3 immediately above.
6. This comment raises a purely economic/financial concern which is outside the scope of the EIR.
7. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2. and Section 4: Monterey Agreement Principle 12.
8. See Commenter 10, response 1.

29. Environmental Defense Fund (letter dated July 20, 1995)

1. It is the responsibility of the SWP water contractors and the Department of Water Resources to ensure that the State Water Project operates as efficiently and effectively as possible under existing environmental and institutional conditions. The Monterey Agreement is an attempt by these parties to address a number of important and pressing problems.
2. The public comment period was 45 days long, as mandated by CEQA. Certain individuals and organizations asked for additional time to respond, which time was granted. CCWA has exceeded the public comment requirements of CEQA for the full airing of relevant issues and concerns.
3. This comment raises legal, rather than environmental, issues and is outside the scope of this EIR.
4. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
5. See "Global Response to Legal and Institutional Comments," Section 6.
6. See responses to Commenters 26, 23, and 22, respectively.

7. We appreciate the suggestion by EDF that the California Research Bureau alternatives should be considered as compared to the Monterey Agreement. Such alternatives were prepared by Dennis O'Connor of the CRB as an initial list of potential actions that could improve the financial conditions of the SWP. As a participant in the legislative hearings on this matter, EDF will recall that Mr. O'Connor clearly indicated that no consideration had been given to the *practical* aspects of implementing his suggested alternatives. Such alternatives were discussed by the Senate Agricultural and Water Resources Committee with that clear understanding. In fact, there was substantial discussion at the August 1, 1994 hearing in Fresno that many of the suggested alternatives likely *could not* be implemented. Finally, the CRB alternatives had a less comprehensive scope than that of the Monterey Agreement, and focused primarily on financial concerns.

Nonetheless, it is fair to say that the initial discussions which preceded negotiations leading to the Monterey Agreement covered most of the same issues addressed by the CRB alternatives. A comparison of such alternatives with the Principles of the Monterey Agreement reveals a number of common elements. Further, such Principles reflect substantial consideration of the capabilities of implementing recommended actions, which is a step that had not been done with the CRB list.

8. The public comment period was 45 days long, as mandated by CEQA. Certain individuals and organizations asked for additional time to respond, which time was granted. CCWA has more than complied with the public comment requirements of CEQA. The EIR will be published upon completion, along with the full set of amendments and other documents proposed to implement the Monterey Agreement.

30. The Bay Institute (letter dated July 20, 1995)

1. The comment addresses the dilemma posed with every Program EIR. CEQA mandates that environmental review occur as early as feasible in the planning of a program, but this early review often occurs before all of the details of full implementation are known. The comment proposes that in lieu of a Program EIR, a series of individual sequential environmental documents be prepared as individual implementation actions proceed. CEQA prohibits this type of "piece-meal" approach to environmental review. In fact, the Program EIR accomplishes precisely what the comment writer appears to intend. The use of this Program EIR to provide an overall analysis of the presently known impacts of the Monterey Agreement (which is an integrated program of conceptual principles) is entirely consistent with CEQA. Where, as here, the framework of the program is being analyzed before information becomes available concerning future implementing activities, the purpose and scope of the Program EIR is to provide as complete an analysis as is practicable, given the information presently available. Under CEQA, the nature of the future actions determines what type of further environmental review is necessary. See CEQA Guidelines Section 15168 for more details as to when a Subsequent EIR or Negative Declaration must be prepared. Section 15168 states that where a later activity in the program will have effects not examined in the Program EIR, a public agency must prepare an Initial Study for that activity to determine

whether an EIR or Negative Declaration is appropriate to analyze the impacts of that activity. This section also states that where the subsequent activity involves site specific operations, the public agency should use a written checklist or similar device to document whether the anticipated environmental impacts were adequately analyzed in the Program EIR.

2. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
3. See "Global Response to Legal and Institutional Comments," Section 5: Procedure for Amending Water Service Contracts.
4. See "Global Response to Legal and Institutional Comments," Section 5: Procedure for Amending Water Service Contracts.
5. The alternatives suggested by the Bay Institute are not evaluated, since none taken separately or in combination would meet all program goals. Implementation of Article 18(b) is discussed elsewhere in this document, as is consideration of financial alternatives developed by the California Research Bureau. There are no "Best Management Practices" for agriculture on a statewide basis as now exists for municipal uses. There are, however, ongoing discussions of this nature through the AB 3616 process. Development of generally applicable "Efficient Water Management Practices" (EWMPs) has proven to be a lengthy and difficult process and there is not yet an agreed-to comprehensive set of EWMPs. Even if a comprehensive set could be developed in the near term, there is not yet a methodology to evaluate their effectiveness. Nevertheless, agricultural areas served by the SWP have implemented numerous water-saving practices and currently demonstrate some of the highest water use efficiencies in California and the world. The implementation of a statewide EWMP program would not significantly affect water demands in the SWP agricultural service areas so as to make such a program an alternative to implementation of the Monterey Principles. The full range of alternatives suggested by the Bay Institute are ideas that have been discussed in the abstract for some time, but resolution of practical applications of such measures has been elusive. The Monterey Agreement Principles will result in actions that are expected to have a high degree of success. The Agreement can be implemented through clear and unambiguous actions with predictable outcomes. The same cannot be said of most of the suggested alternatives.
6. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.

31. Canyons and Streams Alliance (letter dated July 20, 1995)

1. Comments made incorporate those of Commenter Number 23, which were attached by the sender. Please refer to the responses presented regarding the comments raised by Commenter Number 23.

32. Natural Resources Defense Council (letter dated July 21, 1995)

1. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
2. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2 and Section 4: Monterey Agreement Principle 12.
3. See "Global Response to Legal and Institutional Comments," Section 5: Procedure for Amending Water Service Contracts.

33. Environmental Defense Center (letter dated July 21, 1995)

1. See Commenter 12, response 1.
2. There are serious, long-standing disputes over the interpretation of the current water supply contract language, particularly with respect to the allocation procedures in Article 18(a). In water issues, as in many issues, the outcome of litigation is unpredictable. The consensus of the Board of Directors of the State Water Contractors, an organization representing 27 of the 29 SWP water contractors, was that negotiations were preferable to the uncertainties of litigation. In fact, litigation over that one issue would not have addressed the financial and water facility use concerns which were resolved through the Monterey Agreement. The final measure of the acceptability of this approach will be the willingness of each of the contractors to sign the water supply contract amendments which will implement the Monterey Agreement Principles.
3. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
4. See "Global Response to Legal and Institutional Comments," Section 1: Monterey Agreement Principle 2.
5. See Commenter 10, response 4.
6. See "Global Response to Legal and Institutional Comments," Section 6: Legal Adequacy of the EIR.
7. See "Global Response to Legal and Institutional Comments," Section 4: Monterey Agreement Principle 12.
8. The Commenter acknowledges that the outcome of litigation is impossible to predict, yet asks that the EIR not only speculate as to the outcome but conduct an analysis based on that speculation. CEQA requires neither.
9. See Commenter 6, response 2.
10. The comment is correct. The EIR writers could not identify any communities where water availability is the sole constraint on growth. Water availability is only one of

many factors in whether a community population increases, decreases, or remains stable. The EIR analyzed the growth issue to the extent possible given the lack of specific information as to where, how, and when entitlement transfers will occur. As contractors propose such transfers, further environmental analysis based upon the specific facts surrounding the transfer (one of which is the potential for environmental impacts arising out of growth in the transferee community) will occur. Comprehensive analysis of these transfers cannot be included in this EIR because the information is not known.



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